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Sup. Ct.  
**Supreme Court of the United States**

**OCTOBER TERM, 1947**

**No. 290**

**JAMES M. HURD AND MARY I. HURD,**  
**PETITIONERS,**

*vs.*

**FREDERIC E. HODGE, LENA A. MURRAY HODGE,**  
**PASQUALE DERITA, ET AL.**

**No. 291**

**RAPHAEL G. URCILO, ROBERT H. ROWE,**  
**ISABELLE J. ROWE, ET AL., PETITIONERS,**

*vs.*

**FREDERIC E. HODGE, LENA A. MURRAY HODGE,**  
**PASQUALE DERITA, ET AL.**

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF**  
**APPEALS FOR THE DISTRICT OF COLUMBIA**

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**PETITION FOR CERTIORARI FILED AUGUST 22, 1947.**

**CERTIORARI GRANTED OCTOBER 20, 1947.**



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

## No. 290

JAMES M. HURD AND MARY I. HURD,  
PETITIONERS,

vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE,  
PASQUALE DERITA, ET AL.

## No. 291

RAPHAEL G. URCIOLO, ROBERT H. ROWE,  
ISABELLE J. ROWE, ET AL., PETITIONERS,

vs.

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APPEALS FOR THE DISTRICT OF COLUMBIA

## INDEX

	Page
Proceedings in United States Court of Appeals for the District of Columbia	i
Joint appendix in Case No. 9196	i
Index to joint appendix	i
Joint appendix in Case No. 9197	388
Index to joint appendix	389
Opinion, Clark, J.	417
Dissenting opinion, Edgerton, J.	420
Judgment	433

JUDG & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 13, 1947.

	Original	Print
Motion for rehearing		434
Answer opposing rehearing		443
Affidavits in support of motion for rehearing showing changes in property ownership since trial of case		445
Answer to affidavits in support of motion for rehearing		451
Order denying motions for rehearing		453
Designation of record		454
Designation of additional portions of record		455
Clerk's certificate		456
Orders allowing certiorari		457





**JOINT APPENDIX**

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**United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA**

**JANUARY TERM, 1946**

*United States Court of Appeals  
for the District of Columbia*

**No. 9196**

**FILED MAY 31 1946**

*Joseph W. Stewart*  
**CLERK**

**JAMES M. HURD, ET AL., Appellants,**

**VS.**

**FREDERIC E. HODGE, ET AL., Appellees**

**Appeal from the District Court of the United States for the  
District of Columbia**

**FILED MARCH 13, 1946.**



IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1946

**No. 9196**

**JAMES M. HURD AND MARY I. HURD, *Appellants*,**

**vs.**

**FREDERIC E. HODGE, LENA A. MURRAY HODGE,  
PASQUALE DE RITA, VICTORIA DE RITA, CON-  
STANTINO MARCHEGIANI, MARY M. MARCHE-  
GIANI, BALDUINO GIANCOLA AND MARGARET  
GIANCOLA, *Appellees***

**Appeal from the District Court of the United States for the  
District of Columbia**

**INDEX**

	Original	Print
Caption .....	a	1
Complaint .....	1	1
Motion for preliminary injunction .....	7	6
Answer .....	8	6
Order advancing cause for trial and denying motion without prejudice .....	10	7
Motion for change of trial justice and affidavit as to personal bias or prejudice .....	11	8

**JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. MAY 3, 1946.**

	Original	Print
Findings of facts and conclusions of law.....	827	379
Findings of facts .....	827	379
Conclusions of law .....	831	383
Judgment .....	832	384
Notice of appeal .....	834	385
Order extending time to file record.....	835	386
Order for inclusion of transcript of evidence.....	836	386
Designation of record.....	837	386
Certificate of Clerk .....	838	387
Record of Official Court Reporter Proceedings.....	14	10
Appearance of Raphael G. Urciolo, in proper person....	26	11
Dismissal as to Mrs. Urciolo.....	28-34	12
Withdrawal of certain plaintiffs .....	35	12
Mr. and Mrs. Luskey.....	35	12
Miss Pyles .....	35	12
Mr. and Mrs. Skinner .....	36	12
Francis Lanigan .....	36	12
Pre-trial stipulation, Civil Action No. 26192.....	43	13
Urciolo v. Delavigue, Civil Action No. 27958.....	46	15
Testimony .....	49	18
Lena A. Murray Hodge:		
Direct .....	51	18
Cross (Houston) .....	64	26
Cross (Houston) resumed .....	113	48
Cross (Urciolo) .....	126	56
Further cross (Houston) .....	149	60
Recalled (Urciolo) .....	346	178
Cross (Houston) .....	348	180
Recalled (Houston) .....	381	196
Cross (Urciolo) .....	412	211
Cross (Gilligan) .....	414	212
Further cross (Urciolo) .....	417	213
Dana H. Brockway:		
Direct .....	98	45
Cross (Urciolo) .....	101	46
Henry K. Murphy:		
Cross (Houston) .....	157	72
Cross (Urciolo) .....	159	73
Redirect .....	161	74
Recross (Urciolo) .....	162	75
Letter, Gilligan to Hurd, June 30, 1944.....	167	77
Letter, Hurd to Gilligan, July 25, 1944.....	169	78
Margaret Giancola:		
Direct .....	173	80
Cross (Houston) .....	176	82
Cross (Urciolo) .....	183	86
Further cross (Houston) .....	187	89
Balduino Giancola:		
Direct .....	190	91
Cross (Houston) .....	193	92
Cross (Urciolo) .....	196	94

	Original	Print
<b>Record of Official Court Reporter Proceedings—Continued</b>		
<b>Testimony—Continued</b>		
<b>Balduino Giancola—Continued</b>		
Recalled (Houston) .....	369	189
Cross (Urciolo) .....	371	191
<b>Frederic Elliott Hodge:</b>		
Direct .....	261	97
Cross (Houston) .....	262	98
Cross (Urciolo) .....	268	100
Recalled (Houston) .....	556	290
Cross (Urciolo) .....	582	303
Redirect .....	588	306
<b>Monseigneur John M. Cooper:</b>		
Direct .....	218	101
Cross (Houston) .....	220	102
Cross (Gilligan) .....	224	105
<b>Dr. Leland W. Parr:</b>		
Direct .....	226	106
Cross (Houston) .....	227	107
<b>Constantino Marchegiani:</b>		
Direct .....	228	107
Cross (Houston) .....	230	109
Cross (Urciolo) .....	238	114
Further cross (Houston) .....	250	122
Recalled (Houston) .....	374	192
Cross (Gilligan) .....	377	194
<b>Mary M. Marchegiani:</b>		
Direct .....	253	124
Cross (Houston) .....	256	125
Redirect .....	259	127
Recross (Houston) .....	260	127
Recross (Urciolo) .....	261	128
Recalled (Urciolo) .....	343	186
Cross (Houston) .....	366	188
Redirect (Urciolo) .....	368	189
<b>Victoria DeRita:</b>		
Direct .....	262	129
Cross (Houston) .....	265	130
Cross (Urciolo) .....	275	136
Further cross (Houston) .....	278	138
Recalled (Urciolo) .....	350	181
Cross (Houston) .....	353	182
Cross (Gilligan) .....	360	184
Further cross (Houston) .....	361	185
<b>Pasquale DeRita:</b>		
Direct .....	279	139
Cross (Urciolo) .....	282	141
Recalled (Houston) .....	377	194
Cross (Urciolo) .....	379	196

# INDEX

## Record of Official Court Reporter Proceedings—Continued Testimony—Continued

### Raphael G. Urciolo:

Direct .....	288	144
Cross (Houston) .....	307	155
Redirect .....	311	158
Recross (Houston) .....	316	161
Recalled (Houston) .....	390	357
Cross (Gilligan) .....	708	366
Redirect .....	720	373
Recross (Gilligan) .....	723	375
Further redirect .....	725	376

### Ernest W. Pearson:

Direct .....	317	161
Cross (Urciolo) .....	324	166
Redirect .....	325	167
Recross (Houston) .....	326	167

### Mary Irene Hurd:

Direct .....	328	169
Cross (Houston) .....	330	170
Cross (Urciolo) .....	332	171

### Grace Bush:

Direct .....	334	172
Cross (Urciolo) .....	338	174
Cross (Gilligan) .....	342	177
Redirect .....	344	178

### Pauline B. Stewart:

Direct .....	420	215
Cross (Urciolo) .....	432	222
Cross (Gilligan) .....	434	223
Further cross (Urciolo) .....	437	224

### Herbert B. Savage:

Direct .....	442	226
Cross (Gilligan) .....	450	230
Cross (Urciolo) .....	458	235
Further cross (Gilligan) .....	460	237

### James M. Hurd:

Direct .....	461	237
Cross (Gilligan) .....	471	243
Cross (Gilligan), resumed .....	466	257
Recalled (Houston) .....	727	377
Recross (Gilligan) .....	729	378

### Motion by defendants to have Court disqualify himself and certify case to another judge .....

488 251

### Motion overruled .....

494 254

### Neville D. Miller:

Direct .....	500	257
--------------	-----	-----

### Edward L. Wills:

Direct .....	504	259
Cross (Gilligan) .....	507	262
Redirect .....	510	263
Cross (Houston) .....	511	264

Record of Official Court Reporter Proceedings—Continued  
 Testimony—Continued

	Original	Print
Cross (Gilligan) .....	516	267
Further redirect .....	520	269
Charles T. Rush:		
Direct .....	522	270
Cross (Houston) .....	527	274
Cross (Gilligan) .....	531	276
Redirect .....	532	277
Leonard S. Hayes:		
Direct .....	534	278
Cross (Houston) .....	546	286
Cross (Gilligan) .....	548	287
Robert H. Rowe:		
Direct .....	589	307
Cross (Urciolo) .....	600	313
Cross (Gilligan) .....	601	313
Thomas E. West:		
Direct .....	607	316
Cross (Houston) .....	610	318
Cross (Urciolo) .....	611	319
James J. Gorman:		
Direct .....	615	321
Cross (Houston) .....	625	328
Cross (Gilligan) .....	629	330
Thomas W. Parks:		
Direct .....	631	331
Cross (Urciolo) .....	635	339
Cross (Gilligan) .....	638	341
Further cross (Urciolo) .....	663	344
E. Franklin Frazier:		
Direct .....	666	345
Cross (Urciolo) .....	678	352
Cross (Gilligan) .....	681	353
Doris G. Wilkins, direct .....	685	354
Motion to dismiss for lack of privity of estate .....	736	378



**District Court of the United States  
for the District of Columbia**

Civil Action No. 26192

**FREDERIC E. HODGE, et al., Plaintiffs,**

**vs.**

**JAMES M. HURD, et al., Defendants**

**UNITED STATES OF AMERICA,  
District of Columbia, ss:**

Be It Remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled action, to wit: .

1 In the District Court of the United States for the District of Columbia

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, 136 Bryant Street, N.-W.; Pasquale De Rita, Victoria De Rita, 128 Bryant Street, N. W.; Costantino Marchegiani, Mary M. Marchigiani, 124 Bryant Street, N. W.; Balduino Giancola, Margaret Giancola, 130 Bryant Street, N. W.; Francis M. Lanigan, 122 Bryant Street, N. W.; John J. Luskey, Marie E. Luskey, 148 Bryant Street, N. W., Plaintiffs,**

**vs.**

**JAMES M. HURD, MARY I. HURD, 116 Bryant Street, N. W.; Francis X. Ryan, Mary R. Ryan, 300 Gallatin Street, N. W., Defendants**

*Complaint for Injunction*

The plaintiffs respectfully represent to this Honorable Court as follows:

1. That plaintiffs are citizens of the United States and residents of the District of Columbia.

2. That defendants, Hurd, are citizens of the United States, residents of the District of Columbia, and are of the

Negro race or blood. Defendants, Ryan, are citizens of the United States, residents of the State of Maryland, and are of the White race.

3. That defendants, Hurd, are the present owners of record of a certain parcel of real estate in the District of Columbia, described as "lot 114 in the subdivision made by Middaugh & Shannon, Incorporated, of lots in Block 2 numbered 25 "addition to Le Droit Park", as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber County 20 at folio 1; said Block being now known for purposes of assessment and taxation as Square 3125," with improvements known as 116 Bryant Street, N. W.

4. That plaintiffs, Hodges, are the owners in fee simple and the occupants of lot 143, square 3125, improved by premises No. 136 Bryant Street, N. W.; plaintiffs, Pasquale De Rita and Victoria De Rita, are the owners in fee simple and the occupants of lot 108, square 3125, improved by premises 128 Bryant Street, N. W.; plaintiffs, Costantino Marchegiani and Mary M. Marchegiani, are the owners in fee simple and the occupants of lot 110, square 3125, improved by premises 124 Bryant Street, N. W.; plaintiffs, Balduino Giancola and Margaret Giancola, are the owners in fee simple and the occupants of lot 808, square 3125, improved by premises 130 Bryant Street, N. W.; plaintiff, Francis M. Lanigan, is the owner in fee simple and the occupant of lot 111, square 3125, improved by premises 122 Bryant Street, N. W.; and plaintiffs, John J. Luskey and Marie E. Luskey, are the owners in fee simple and the occupants of lot 137, square 3125, improved by premises No. 148 Bryant Street, N. W. Plaintiffs are all persons of the White race.

5. That all of the real estate described herein as being owned by the plaintiffs and defendants is located on the south side of Bryant Street, Northwest, between First and Second Streets, in the District of Columbia (there being no development on the north side of said street other than the United States Reservoir Grounds); that all of the properties herein described, as well as all other properties on the west side of First Street, N. W., between Adams and Bryant Streets, and all properties on Bryant Street from First Street through 152 Bryant Street, were erected and sold through Middaugh & Shannon, Incorporated, said group of houses being known as "Middaugh & Shannon, Inc. sub-

division of lots in Block 25, Addition to LeDroit Park, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber County 20, at folio 1;" that Middaugh & Shannon, Inc. sold all of said lots or properties by and through the usual form of deed in which the following covenant, running with the land, has appeared in the deeds to all of the properties in said subdivision, including the property now owned and occupied by the Negro defendants, Hurd, all of which said deeds were duly recorded among the Land Records of the District of Columbia:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

6. That by deed dated and recorded December 5, 1905 as Instrument No. 76 in Liber 2988 at folio 78 in the Land Records of the District of Columbia, Middaugh & Shannon, Inc., conveyed lot 114, square 3125 to Thomas P. Rooney, and thereafter, by mesne conveyances, the defendants, Francis X. Ryan and Mary R. Ryan, his wife, became the owners of said property by deed from Frederic Richmond and Pearl Richmond, his wife, recorded among the said Land Records on May 9, 1944 as Instrument No. 12559, being dated May 3rd, 1944 and acknowledged before a Notary Public on May 5, 1944. Said defendants, Ryan, on the same day (May 9th, 1944) by deed dated May 4, 1944, and acknowledged before a Notary Public on May 4, 1944, conveyed said property to the defendants, Hurd, persons of the Negro race; said deed being recorded as Instrument No. 12561, no reference being made in either deed to any covenants of record as to Negro ownership or occupancy. Both transactions were consummated simultaneously at the offices of the District Title Insurance Company, 1413 I Street, N. W., and all parties were duly informed as to the Negro covenant, hereinbefore set forth, running with the land and binding all parties.

7. That all of said properties in said 100 block of Bryant Street, N. W., from First Street through No. 152 Bryant St., are now owned and occupied by persons of the White race, except the property, the subject of this suit. Following the sending of a Registered Mail, postage prepaid, letter on

June 30, 1944, by Henry Gilligan, attorney for these plaintiffs, to said defendants, Hurd, said defendants replied under date of July 25th, 1944, stating they would "move from the neighborhood" and requesting "sufficient time within which to comply with the (your) mandate", stating that the defense of laches would not be pleaded to any action brought.

8. Plaintiffs aver that defendants, Ryan and Hurd, are charged with notice by law and by actual knowledge of said covenant of record herein set forth, running with the land; that in addition they had such knowledge of said covenant before defendants, Hurd, moved into said property; and that they knowingly and wilfully consummated the transactions, and the defendants, Hurd, became the owners and occupants of said property in contravention of said covenant of record, which has never been abrogated or nullified, and now is in full force and effect.

9. That said parcels of real estate herein described and belonging to plaintiffs were each acquired by said plaintiffs, respectively, subject to and restricted by said covenant of record; that all the plaintiffs and defendants derive title either directly or by mesne conveyances from Middaugh & Shannon, Inc.; that all of said plaintiffs purchased his, her or their said dwellings upon the advice and under the belief that said covenant was binding upon said plaintiffs as well as upon owners of all property in the portion of square 3125 developed by said Middaugh & Shannon, Inc., and that all of said property was subject to the same covenant and restriction and penalty for violation; that said neighborhood is residential in character and the property located therein is of good value.

10. Plaintiffs aver that the above mentioned deed and conveyance of lot 114, square 3125, and improvements thereon, from Francis X. Ryan and wife to James M. Hurd and Mary I. Hurd, his wife, persons of the Negro race or blood, are a nullity and of no effect, and said deed and conveyance confer no property rights upon said defendants, Hurd, for the reason that they unlawfully and wilfully acquired said deed and accepted said conveyance in violation of the aforesaid covenant of record; that the continued occupancy of said property by the defendants, Hurd, as well as to permit the deed and conveyance from defendants, Ryan, to said defendants, Hurd, to remain a matter of record, and said grantees to continue the owners and occu-

pants of said property, will be injurious, depreciative and absolutely ruinous of the real estate owned by plaintiffs, and will be harmful, detrimental and subversive of the peace of mind, comfort and property rights and interests of plaintiffs and of other property owners, and said neighborhood will become depreciative in value, and undesirable as a neighborhood wherein White people may live; that the continued occupancy and/or ownership by the defendants, Hurd, or any person or persons of the Negro race or blood, will constitute a continuing wrong and injury that is irreparable, and is incapable of ascertainment and compensation in damages, and the only adequate remedy is by way of injunction.

Wherefore, plaintiffs demand,

1. That the defendants, James M. Hurd and Mary I. Hurd, be enjoined, during the pendency of this suit, and permanently thereafter, from selling, renting, leasing, transferring or conveying premises 116 Bryant Street, Northwest, in the District of Columbia, to Negroes or colored persons or persons of the Negro race or blood, and from permitting said premises to be occupied by said Negroes or persons of the Negro race or blood.

2. That the defendants, James M. Hurd and Mary I. Hurd, be enjoined, pending this suit, and permanently thereafter, from occupying said premises, 116 Bryant Street, Northwest, and that said defendants, by Order of this Court, be directed to vacate said premises immediately, and to remove therefrom all household goods and other effects belonging to said defendants.

3. That the deed dated May 4, 1944 and recorded May 9th, 1944 as Instrument No. 12561 among the Land Records of the District of Columbia, from the defendants, Francis X. Ryan and Mary Ryan, his wife, to defendants, James M. Hurd and Mary I. Hurd, his wife, be cancelled, and a judgment be entered herein declaring said conveyance void and of no effect, and further declaring title to be in Francis X. Ryan and Mary Ryan, his wife, subject to the restrictions and penalty of the covenant of record herein set forth.

4. That plaintiffs have judgment for costs, and that a reasonable attorneys' fee be allowed.

5. That they be allowed such other and further relief as shall be proper.

*Motion for Preliminary Injunction*

Come Now the plaintiffs through their attorney and move this Honorable Court to issue out of this Court a preliminary injunction commanding and compelling the defendants, James M. Hurd, Mary I. Hurd, Francis X. Ryan and Mary R. Ryan, and each of them, to conform to, abide by and comply with the covenant or restrictive deed provision of record, running with the land known as 116 Bryant Street, Northwest, (Lot 114, Square 3125) in the District of Columbia; and further, enjoining defendants James I. Hurd and Mary I. Hurd from selling, renting, leasing, transferring or conveying said land and premises to Negroes or any person or persons of the Negro race or blood; and further, enjoining said defendants from using or occupying said premises, and from suffering or permitting said premises to be used or in any manner occupied by any other person or persons of the Negro race or blood.

And for reasons therefor plaintiffs refer to the verified Complaint filed in this cause, and such other matters as may properly be brought to the attention of the Court.

*Answer*

Defendants James M. Hurd and Mary I. Hurd answer the complaint as follows:

1. They admit the allegations of paragraph 1.
2. They deny the allegations of paragraph 2.
3. They admit the allegations of paragraph 3.
4. They deny plaintiffs or any of them is of the white race, and neither admit nor deny the allegations of ownership set forth in paragraph 4 and call for strict proof as far as the allegations are material.
5. 6. They neither admit nor deny the allegations of paragraphs 5 and 6 except they deny defendants Hurd are persons of the Negro race and admit the conveyances to defendants and the transaction at the Title Company as alleged. Otherwise they call for strict proof as far as the allegations are material.

7. They deny the allegations of paragraph 7, except they admit the correspondence alleged.

8. They admit defendants Hurd knew of the alleged covenant before they moved in the premises, but are advised by counsel the other allegations in said paragraph are conclusions of law, call for no answer and they do not answer the same.

9. They deny the allegations of paragraph 9.

10. They deny the allegations of fact in paragraph 10, and make no answer to the conclusions of law.

11. Further answering, defendants say that the 100 block of Bryant Street, Northwest was not at any time material herein a so called "white" neighborhood, is not such now, and could not be made such by any action of this Court, and a decree for plaintiffs in this suit would be futile; that the neighborhood, square and surrounding area have completely changed in character since the original conveyances by Middaugh and Shannon, Inc., and that the purposes which called forth said covenants, if any, cannot now be accomplished and a decree would be futile.

12. Further answering, defendants say that plaintiffs have abandoned the enforcement of said covenant and lost all rights to demand enforcement thereof by acquiescing in the acquisition of all the "Middaugh & Shannon, Inc." houses in Square 3125 fronting on Adams Street, Northwest.

#### First Defense

The alleged covenant is void.

#### Second Defense

The purposes of the covenant are no longer possible of enforcement, because of change of neighborhood.

#### *Order Advancing Cause for Trial and Denying Motion Without Prejudice*

Upon motion of plaintiffs in open court, defendants consenting, to have the instant cause advanced for trial and it appearing to the court upon consideration of the complaint and answer that it is desirable to have the issues determined upon a complete record as soon as practicable, it is this 2d day of November, 1944, Ordered,

1. That this cause be advanced for hearing on the merits.
2. That the plaintiff's motion for preliminary injunction be denied, without prejudice.

*Motion for Change of Trial Justice, and Affidavit as to  
Personal Bias or Prejudice*

DISTRICT OF COLUMBIA, ss:

James M. Hurd, a party defendant in the above cause, being first duly sworn on oath states that he charges the Honorable F. Dickinson Letts, the Justice presiding at the trial of this cause, with personal prejudice and bias against him and his wife, also a co-defendant; that this cause was brought against affiant and his wife, as well as two other persons their grantors, to cancel the deed to affiant and his wife and to evict them from premises 116 Bryant Street, Northwest (Lot 114, Square 3125 in the District of Columbia) on the ground that they are Negroes and have taken title and possession in breach of the following covenant which burdens the title to said property, according to the allegations of the complaint:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000); which shall be a lien against said property."

That on Saturday, October 13, 1945, affiant's counsel discovered that the presiding justice lives in and has an interest in premises 3500 Garfield Street, Northwest (Lot 32, Square 1942 in said District), title to which is burdened by the following covenant: Liber 4660, f. 148, Recorder of Deeds.

"Subject to the covenants to run with the land perpetually, . . . that said land and premises will not be sold, rented or conveyed, the whole nor any part thereof, or any structure thereon, to any person of African descent; . . ."

That in said trial the presiding justice has been personally biased and prejudiced against affiant and his wife who are

alleged to be colored, and in favor of plaintiffs who are alleged to be white persons because of his interest in the issues involved in the case.

12 That the instant cause came on for hearing on October 9, 1945 at 1:30 p. m.; that it was not known for certainty until that moving before whom the case would be tried; that no information was available to put affiant on inquiry and he had no reason to believe that the justice lived in property subject to such a covenant until his counsel was given such information by telephone about 4:30 p. m. Friday, October 12, 1945; that investigation was made and the facts ascertained about 1:30 p. m. Saturday, October 13, 1945 after the Clerk's office had been closed; and affiant has made and filed this affidavit of prejudice and bias at the first possible moment after the facts were discovered.

Wherefore affiant respectfully requests that the presiding justice proceed no further herein but that another Justice shall be designated in the manner prescribed in section 24 of Title 28, United States Code, or chosen in the manner prescribed in section 27 of said Title, or certified in the manner prescribed in Section 314, Title 11, D. C. Code, 1940 (Mar. 3, 1901, ch. 854, sec. 67) to hear and decide this cause.

JAMES M. HURD.

Subscribed and sworn to before me this 15th day of October, 1945.

MARY G. MURR,  
Notary Public for D. C.

*Certificate of Counsel.*

I, Charles H. Houston, counsel of record for affiant, defendant James M. Hurd, do hereby certify that the foregoing application and affidavit are made and presented in good faith.

13

Filed February 25, 1946

In the District Court of the United States for the District  
of Columbia

Civil Actions Nos. 26192 and 29943

FREDERIC E. HODGE, et al, Plaintiffs,

vs.

JAMES M. HURD, et al., Defendants

and

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URGIOLO, et al, Defendants

Certified Record of Official Court Reporter Proceedings  
before Associate Justice Petts, Tuesday, October 9, 1945.

14 In the District Court of the United States for  
the District of Columbia, Civil Division No. 3

Civil Division No. 3

Civil Action No. 29,943

FREDERIC E. HODGE, LENA A. MURRAY HODGE, 136 Bryant  
St., N. W., Pasquale De Rita, Victoria De Rita, 128  
Bryant St., N. W., John J. Luskey, Marie E. Luskey,  
148 Bryant St., N. W., Constantino Marchegiani, Mary  
M. Marchegiani, 124 Bryant St., N. W., Balduino  
Giancola, Margaret Giancola, 130 Bryant St., N. W.,  
Helen E. Pyles, 1739 Q St., N. W., Melville Gibbs Skinner,  
Helen Augusta Skinner, 1832 Kilbourne Pl., N. W., Plain-  
tiffs,

vs.

RAPHAEL G. URGIOLO, 907 New York Ave., N. W., FLORENCE  
E. URGIOLO, 1630 Webster St., N. W., Robert H. Rowe,  
Isabelle J. Rowe, 50 Florida Avenue, N. W., Herbert B.  
15 Savage, Georgia N. Savage, 3507 New Hampshire  
Ave., N. W., Pauline B. Stewart, 2015 - 13th St., N. W.,  
Defendants.

## Civil Action No. 26,192

FREDERIC E. HODGE, LENA A. MURRAY HODGE, 166 Bryant St., N. W., Pasquale De Rita, Victoria De Rita, 128 Bryant St., N. W., Constantino Marchegiani, Mary M. Marchigiani, 124 Bryant St., N. W., Balduino Giancola, Margaret Giancola, 130 Bryant St., N. W., Francis M. Lanigan, 122 Bryant St., N. W., John J. Luskey, Marie E. Luskey, 148 Bryant St., N. W., Plaintiffs,

VS.

JAMES M. HURD, MARY I. HURD, 116 Bryant Street, N. W., Francis X. Ryan, Mary R. Ryan, 300 Gallatin Street, N. W., Defendants.

16-17 Washington, D. C., Tuesday, October 9, 1945.

The above-entitled matters came on for trial before Hon. F. Dickinson Letts, Associate Justice, at 1:30 o'clock p. m.

Appearances: Henry Gilligan, Esq., for the Plaintiffs. Charles H. Houston, Esq., for all defendants with the exception of Raphael G. Urciolo. Raphael G. Urciolo, Esq., appearing in his own behalf.

18-25 *Proceedings*

The Clerk: Frederic E. Hodge, et al versus James M. Hurd, et al, Civil Action No. 26,192, and Frederic E. Hodge, et al, versus Raphael G. Urciolo, et al, Civil Action No. 29,943..

26 Mr. Urciolo: In that event, may I ask Your Honor, then, to please allow me to adopt the pleadings heretofore, and that I be allowed to represent myself? I will adopt the pleadings heretofore. After all, I  
27 think that Mr. Gilligan,—he has no objection to the withdrawal of Mr. Houston, provided that I accept all of the pleadings heretofore filed.

The Court: And it may be understood that you may be admitted for the purposes of this case and appear in your own behalf.

28-34 Mr. Houston (interposing): Let me make this statement:

As counsel for Mrs. Urciolo, I state for the Court, for the purpose of inducing a dismissal; that Mrs. Urciolo has no substantial interest whatsoever in any property involved in this case, or any property on Bryant Street, Northwest, in the 100 block. Any paper interest or record interest which she may have, she holds simply as a straw for her husband, Raphael C. Urciolo.

Mr. Gilligan: And if necessary, would so testify?

Mr. Houston: She is present, and will so testify.

Mr. Gilligan: I am perfectly willing to have her dismissed as a defendant.

The Court: Then, the case will stand dismissed as to Mrs. Urciolo.

35 Mr. Gilligan: Mr. Luskey is an invalid, and while able to walk alone, on the street, a little, the doctor has told him that he must not under any circumstances testify. I have also a statement from Dr. J. Chester Brady, to the effect that he did not want Mrs. Luskey to testify in the case.

For that reason, I am perfectly willing for those two people to be withdrawn as plaintiffs in both cases.

Then, there is a Miss Pyles, who is a plaintiff in this case.

Mr. Fichter—

Mr. Fichter: She is not present. She is totally blind and out of the city and unable to appear, but she has the interest of the community at heart.

Mr. Gilligan: How long has she been out of the city?

Mr. Fichter: She has been out for over three months.

Mr. Gilligan: I am willing to have Miss Pyles' name withdrawn as a plaintiff. That leaves the last two in the second case, the Skinners and the Skinners are elderly people and explained to the plaintiffs that because of the fact that they were elderly people and practically house-ridden, that they would be very glad to send their representative, a daughter who handles the business affairs, down to testify, and I have said that in my judgment that was  
36-37 not proper and for that reason I am very happy to withdraw the Skinners as plaintiffs in this case, so

that the plaintiffs in the two case- will be exactly the same.

Mr. Houston: Lanigan is dead.

Mr. Gilligan: Francis Lanigan, the plaintiff in the original case, died, has died. His daughter is here and will be willing to be substituted as a plaintiff in both cases, inasmuch as she is one of the heirs of her father, who had no will.

The Court: Lanigan—I don't see that.

Mr. Gilligan: Here it is, here (indicating).

The Court: I was looking over here (indicating).

Mr. Gilligan: It is not in the other case.

We withdraw Francis Lanigan.

The Court: So that plaintiffs will remain the same in both cases?

Mr. Urciolo: What about the Marchegianis?

Mr. Houston: Let me state this: That we are not bound of course, by representations of counsel as to the reasons why the parties do not appear. The mere fact is, that the only thing we have in front of us, and that is without any reflection on Mr. Gilligan's accuracy,—is simply that the parties are not in the court ready to go ahead.

38-42 Mr. Gilligan: The plaintiffs in both cases are—Fred-  
eric E. Hodge and Lena A. Murray Hodge, 136 Bry-  
ant Street, Northwest; Pasquale de Rita and Victoria De  
Rita, 128 Bryant Street, Northwest; Constantino Marche-  
giani and Mary M. Marchegiani, 124 Bryant Street, North-  
west; Balduino Giancola and Margaret Giancola, 130 Bry-  
ant Street, Northwest,—those four houses, in both cases.

Mrs. Houston: I wanted to see whether his Honor is going to rule on my motion.

The Court: The objection to the consolidation will be overruled.

43 Mr. Gilligan: If your Honor please, in the stipula-  
tions, in this original case,—do you have them before  
you?

The Court: The stipulations? You mean the pre-trial  
order?

Mr. Gilligan: 26192, pre-trial, yes, sir. You were the  
pre-trial justice.

The Court: Yes.

Mr. Gilligan: I would like to read it in order that the Court may have it definitely before it. I think the stenographer can get it from the stipulation.

The first stipulation is:

"1. All of the real estate described in this action, owned by plaintiffs and defendants, is located within that Middaugh-Shannon development of Bryant Street, Northwest, lying on the south side of said street west of First Street down to and including the property known as 152 Bryant Street, Northwest, consisting of 20 houses, subject to the above deed covenant. The 11 houses west of 152 Bryant Street, N. W., ran down to Second Street, N. W., are not subject to the above covenant or any other covenant as to Negro ownership or occupancy. All of said properties are in block 25, Addition to Le Droit Park, the plat of Middaugh-Shannon development being recorded in the Office of the Surveyor for the District of Columbia in Liber County 20 at folio 1. In Square 3125  
44 (bounded by Bryant Street, N. W. on the north, the west side of First Street, N. W. on the east, the north side of Adams Street on the south, and the east side of Second Street on the west) in addition to the Middaugh-Shannon houses on Bryant Street, N. W., subject to the above deed covenant, all of the houses on the west side of First Street and nine houses in the middle of Adams Street, are Middaugh-Shannon built houses, subject to said covenant; all other houses in said Square 3125 are not subject to said covenant."

And, the deed covenant is set forth at the beginning of the case.

The second stipulation is that:

"2. Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W., by Mesne conveyances since December 5, 1905, the date of the conveyance from Middaugh-Shannon Inc. to Thomas P. Rooney, became the property of the defendants, Francis X. Ryan and Mary R. Ryan, his wife, by deed from Frederick Richmond and wife, dated May 3d, 1944, recorded on May 9th, 1944, as Instrument No. 12559, who deeded it by deed dated May 4th, 1944, and recorded May 9th, 1944,

as Instrument No. 12561 to the defendant; James M. Hurd and Mary I. Hurd, his wife, who now occupies said premises."

I think I should add, right at this point—

45 The Court: Now?

Mr. Gilligan: Perhaps not.

The Court: You cannot add; you are talking about the stipulation, now.

Mr. Gilligan: Pardon me, that is correct.

"3. Plaintiffs Hodges are the owners in fee simple and the occupants of Lot 143 Square 3125 (No. 136 Bryant Street, N. W.); plaintiffs Pasquale De Rita and wife are the owners and occupants of Lot 108, Square 3125 (128 Bryant Street, N. W.); plaintiffs Marchegiani are the owners in fee simple and the occupants of Lot 110, Square 3125 (124 Bryant Street, N. W.); plaintiffs Giancola are the owners in fee simple and the occupants of Lot 808, Square 3125 (130 Bryant Street, N. W.); plaintiff Francis M. Lanigan is the owner in fee simple and the occupant of Lot 111, Square 3125 (122 Bryant Street, N. W.); plaintiffs Luskey are the owners in fee simple and the occupants of Lot 137, Square 3125 (128 Bryant Street, N. W.).

"4. The plat initialed by the Pre-trial Justice, may be received in evidence without formal proof, but subject to check as to accuracy.

That means the plat which is before Your Honor is also admitted without formal proof, but subject to check as to accuracy.

46 "5. The letter from J. M. Hurd to Henry Gilligan dated July 25, 1944, may be received in evidence without formal proof; initialed by Pre-trial justice.

"6. The carbon copy of letter from Henry Gilligan to James M. Hurd, dated June 30, 1944, initialed by Pre-trial justice may be received in evidence without formal proof, provided the original of said letter is not available at trial."

That is all of the stipulation.

Now, if Your Honor please, in order that the facts may be before the Court, I should say that the defendants admit

the ownership of the several properties, the six properties, by Mr. Urciolo or Mrs. Urciolo, and the other defendants Rowe, Savage, and Stewart.

The Court: As alleged.

Mr. Gilligan: As alleged. That is admitted in their answer.

I want to call Your Honor's attention, at this time, before proceeding with the case, to a suit which was filed by Mr. Urciolo against Mr. Delavigne and all the other owners of these various properties under the deed covenant on Bryant Street. He calls this a "complaint for injunction to quiet title," Civil Action No. 27958, filed March 5, 1945.

In this action he attempts to get an injunction to enjoin the plaintiff, all of these defendants, I should say, from bringing any action for an injunction against him as the owner of these various properties, and also to remove the cloud on the title to these six,—these six titles,—the cloud being this restrictive covenant in the deed.

After Mr. Urciolo sold three of his properties to the people whom we allege to be colored, and before service was had on all these defendants in this case, Mr. Houston, who represented him, called me and said he was going to dismiss that case, so that the case is actually dismissed. There it is (indicating) and I would like to put this into the record as Plaintiffs' Exhibit 1, if I may.

Mr. Houston: No objection.

The Court: Has it been formally dismissed,—has it Mr. Houston?

Mr. Houston: Yes, Your Honor.

The Court: It may be admitted.

(Thereupon the document identified by counsel as "Complaints injunction to quiet title, Civil Action No. 27958," was marked Plaintiffs' Exhibit No. 1 and by the Court admitted in evidence.)

Mr. Gilligan: I think we will be able to show your Honor, in the course of this case, that all the territory to the east of the particular 100 block of Bryant Street, from First to North Capitol, all of First Street between Bryant and Adams, to the south of Bryant on both sides of the street, all of the 2400 block of First Street which is above Bryant, as far as the houses go on that First Street, all of Channing Street between North Capitol and First, the block immediately above Bryant, all of Bryant

Street itself, between North Capitol and First and all of Adams Street between North Capitol and First are either under deed covenant or restricted agreement which are still in effect, and all of the properties in all those blocks are occupied by white people, we say.

The Court: Is that a stipulation?

Mr. Gilligan: That is in the stipulation. I am simply outlining my case. I wanted you to get the facts so that you could see the case we have.

Mr. Houston: Not on the—

Mr. Gilligan (interposing): The west side of Adams, is under deed covenant; the east side of that block, Mrs. Mays lives at 2210 First Street. I think Your Honor is familiar with that, inasmuch as the matter was before you in a contempt proceeding. She still lives there. That action has to September first, 1946 to run.

I think if we can show your Honor that these are the facts, and that the Savages and the Hurds and Miss Stewart are negroes, that with actual knowledge and constructive knowledge and after being put on notice also, that they have moved into their properties after they had been served with processes, this complaint, and that Mr. Urciolo owns the other three houses and is attempting to sell them to colored, or expects to sell them to colored, I shall ask Your  
49a Honor to give us a permanent injunction against the three colored families, requiring them to move from the premises immediately, setting aside the deeds from the Urciolos to them, and also an injunction preventing Mr. Urciolo from disposing of any of the other three houses to negroes.

Mr. Houston: If your Honor please, we start out with the proposition, we deny that the plaintiffs are white, we deny that this is a white neighborhood, obviously we deny that the covenant is valid. We deny that all the defendants are colored. We say there has been a change of neighborhood. We say that the covenant is unenforceable, that an injunction should not issue because the object of the injunction could not be obtained, and that the purposes of the covenant can no longer be achieved, and with that statement and in view of the fact that we have already noted our objection to the consolidation, I rest.

Mr. Gilligan: (all Mrs. Hodge.

Whereupon—MRS. LENA A. MURRAY HODGE, called as a witness by and on behalf of the plaintiff, and after having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Gilligan:

Q. What is your full name?

51 A. Lena A. Murray Hodge.

Q. Where do you live?

A. 136 Bryant Street, Northwest.

Mr. Gilligan: Inasmuch as the ownership of these properties is admitted, I don't think it is necessary to present these deeds (indicating), although I am perfectly willing to have it done.

Mr. Houston: She is an original owner?

Mr. Gilligan: An original owner.

By Mr. Gilligan:

Q. When did you buy your home, Mrs. Hodge?

A. September, 1909.

Q. Did you buy it in your name alone?

A. No, my husband and I, Frederic Elliot, and I.

Q. Frederic Hodge and Lena A. Murray?

A. The house was bought before we were married.

Q. And you have lived there in that house ever since?

A. 26 years this past Saturday.

Q. At the time of your purchase did you or did you not know anything about the deed covenant in connection with that property or any other property on your block?

A. We certainly did, because that was about the first thing that the agent for those Middaugh & Shannon houses told us when we went there to look at the houses. He pointed out the deed covenant, that the covenant that  
52 was in the deed to the house, which of course we liked.

The Court: What covenant? Do you want to make that clear for the record?

Mr. Gilligan: Which covenant?

The Court: What the covenant was.

Mr. Gilligan: It is a covenant that appears in the stipulation, if your Honor please. I might ask the witness.

By Mr. Gilligan:

Q. Can you tell his Honor just what that is?

A. Yes. The covenant read that this property can never be sold, rented, or in any other way conveyed to negroes or persons of negro blood under penalty of \$2,000, which would be a lien against the property.

Q. That is generally correct.

Now, Mrs. Hodge, over the years in which you have lived in the particular house where you are now living, have there been any houses in the 20 houses down through 152 that were sold to or rented to colored people?

A. Well, yes; there have been two rented, but in both cases, one that was rented, the people moved in but in some way they found out with regard to this covenant and never occupied the house, and I might say this—that they made the real estate dealer who rented that house pay them—

Mr. Houston: I object.

The Court: Sustained. Just answer Mr. Gilligan's question.

The Witness: All right. Then, at 144, that was rented a couple of times but they never occupied the house. They moved out or didn't occupy it, in fact.

By Mr. Gilligan:

Q. Did any colored people ever move in prior to the Hurds?

A. No, not that occupied it.

Q. Any of those—

Mr. Houston (Interposing): What was the last?

The Court: Not and occupied the houses, as I understood it.

The Witness: No.

By Mr. Gilligan:

Q. In the same 20 houses, was any house ever sold to colored people prior to the one to Hurd?

A. Yes, 152 was sold about, I would say—about a year ago last spring. It was sold; I do not know the name, but

it was sold by Mr. Thrift and Mr. Gruver, I think the name was, to colored.

Q. What happened in that case? Do you know, of your own knowledge?

A. Yes, I do, because after we found out that this happened, I contacted Mr. Gilligan as our attorney in regard to it, and called the plaintiffs to my house to find

54 out what we could do about it, and Mr. Gilligan immediately took steps to see Mr. Thrift or Mr. Gruver and the parties who bought it, and they gave up ownership of the house without any trouble whatever.

Q. So, prior to the occupancy by the Hurds, no house had ever been occupied for any length of time in that twenty houses?

A. No.

Q. Do you know Mr. Hurd?

A. Yes, I know him when I see him.

Q. Where does he live?

A. 116.

Q. Bryant Street?

A. Bryant Street, Northwest.

Q. Will you tell the Court the first time you saw him, and just what occurred between you and Mr. Hurd?

A. Yes, sir. The first time that I saw Mr. Hurd was the day that he moved in, possibly a year ago last May, I think it was, and I went up to him and asked him if he was the owner or was the one that had bought the house and was the owner and was moving, the day he moved in. He said he was, and he said—I asked him “Are you a Negro,” and he said “I am.” And I asked “How about your wife?” He said she was; then I said to him “You don’t know, then, that there was a covenant in the deed to this property prohibiting negroes from moving in?” He said “I did not.” I said “It is strange because the title company has always been very careful about telling

55 the people who have bought these houses, and pointing it out to them.” He said “I wonder why they didn’t tell me?” I said that “I can’t tell.” Then, I asked him who sold him the property and he informed me that he did not know who sold him the property, and I went on to talk to him, I said “It is just too bad, because this may be a case of your having to move out.” I said, “Because some other ones have moved out that have gone in to these houses,” and I finally said “Did Richmond sell you this

house?" and then he admitted that Richmond sold the house to him.

Q. Is he still living in the property?

A. Yes, sir. And then he told me his name was Hurd, and he asked what my name was and I told him, I said "Mrs. Hodges." And he said "Mrs. Hodges, I think you will probably find out that we will be as clean as a lot of white ones will." I said "I don't dispute that, but," I said "That isn't the issue. The covenant has been violated and that is the thing we don't want to happen."

"Now," I said, "Mr. Hurd, there is lots of people along here who are elderly people and they will have to move probably if the colored come in, it will force them out," I said, and "Just think, I have been in my home since the time I was married almost 30 years ago, in October," I said "I don't want anything to force me out of my home," and I said "That is probably what you are going to do here."

56 So he finally said "Well, of course we are not socially inclined"——

Mr. Houston: If your Honor please, may I simply note that the fact, that what is admissible against Hurd has no relevancy as to any of the other defendants in the other case.

Mr. Gilligan: I haven't asked against any of the other defendants.

Mr. Houston: The cases are consolidated.

The Court: It may apply only to Hurd, and I suppose Mrs. Hurd.

The Witness: Mrs. Hurd, the two of them.

And, well, I said——

The Court (Interposing): I suppose it would be binding against her, perhaps.

Mr. Houston: I would like to reserve that.

The Court: In other words, I suppose it will be shown that they had a joint ownership in the property, will it not?

Mr. Houston: As a matter of fact, I think it is stipulated.

Mr. Gilligan: It is admitted that they are joint owners.

The Court: Then, whatever one says will be binding against the other..

Mr. Houston: I don't think so, not generally, your Honor; may be an act reflecting at a collateral conversation——

57 I should say the answer is no. Hearing a personal conversation, going into the predelictions and desires

between Mrs. Hodge and Hurd himself; she is talking about what he would do; she was talking about that. I don't think — is binding on other than the personal parties to the conversation.

The Court: Well, the record may so indicate at this time. If later it is determined that it will bind Mrs. Hurd, it may then be considered.

Mr. Houston: I don't know whether I caught the last part in regard to Mrs. Hurd—what?

The Court: That it might be later considered as to whether it binds her or not.

By Mr. Gilligan:

Q. Mrs. Hodge, have you ever seen Mrs. Hurd?

A. No, I never have seen Mrs. Hurd, to know her.

Q. Have you seen any women going in and out of Mr. Hurd's house?

A. Well, yes, I have seen people going in and out. Of course I don't know whether they live there, but going in and out.

Q. Have you seen the same woman going in and out frequently?

A. No, I can't say that I have. Of course I live quite a little way, and wouldn't.

Q. But you have seen people going in and out frequently?

58 A. Yes, I have seen colored people going in and out.

Q. Have you seen any white people?

A. I have not.

Q. You are sure those going in and out have been negroes?

A. I am sure they have been negroes.

Q. Directing your attention to the houses west of 152 Bryant Street, how are they occupied?

A. Well, there are eleven that are occupied by negroes, where they don't have the covenant.

Q. Will you tell his Honor now how long they have been occupied by negroes, if you know?

A. Around between 18 and 20 years at least, possibly a few more, but at least 18 or 20 years they have been occupied.

Q. Will you tell his Honor, if you please, just what the north side of Bryant Street in the 100 block is improved with?

A. The north side of Bryant Street is part of the McMillan Park Reservoir, with no houses whatsoever, from First down to Second.

Q. How about between Second and Fourth Streets on the north side of Bryant Street?

A. Well, there is a pumping station there, and a garage, the garage first.

Mr. Houston: On the north side?

59 The Witness: North side, and the pumping station —well, the garage comes first, and then a pumping station, well, there are yards connected with the Water Department there, and the very last down to Fourth Street is a very old house, old landmark, that is on the north side.

By Mr. Gilligan:

Q. How about the south side of Bryant Street, west of Second Street?

A. Well, on the corner there is a pipe yard, and next there is a repair shop for the District cars; and then, there are homes that are occupied by colored, from there on through to the school, above Third.

Q. Do you know then, Mrs. Hodge, directing your attention to any further occupancy of the homes in the 20 houses under deed covenant, have you observed whether or not any colored people have occupied any of those homes?

A. Oh, yes, 118 is occupied by colored; 150 is occupied by colored, and 134 will be colored by tonight.

Q. What do you mean by that?

A. Moving in this afternoon.

Q. Moving in this afternoon?

A. Yes.

Q. By whom?

A. Mr. Savage.

Q. Have you met him?

60 A. Yes, Saturday in my home.

Q. Tell what occurred then.

A. He came for the keys that Mrs. Petit had left and asked me to give to Mr. Savage, and he came to the front door, after dark, and my husband went to the door and called me, and I came up, he came back and said "I would like to have the key," he said "I am Mr. Savage, who is moving in next door, and I would like to have the key."

Q. What color was he?

A. A negro.

Q. No question about it?

A. No question about it.

Q. Have you seen the people in 118?

A. Yes, they—the Rowes, I have seen them.

Q. You have seen them?

A. Yes.

Q. Can you identify them?

A. Well, I can't really say that I can do that, because there are several there. I can identify rather a little colored woman that is in there, and the one I judge is Mr. Rowe is a dark man.

Q. How about the others?

A. The other one that I have seen there, a little girl who is about eight, I would judge, and was definitely a colored child, a negro; and there was a boy; whether he is  
61 still there I don't know; about eight or nine, who is definitely a negro.

Q. All that you have seen are colored?

A. All I have seen going in there are negroes.

Q. Have you seen anyone going into 150 Bryant Street?

A. Well, yes I have. I saw, the day before, a couple of days before they moved, two going in; one was a rather medium colored woman, and the other was quite dark, a boy about 18 I would judge, who was dark, and I have seen a younger man, very dark, and an old colored man who has been sitting on the porch out there.

Q. All colored?

A. Yes.

Q. In connection with that time you saw them two days before they moved in—

A. (Interrupting:) Yes.

Q. What did you do in connection with any suit against these people, if anything?

A. Well, after I found them, and—let's see, there was the first one, they moved in before the Rowes did; I immediately got in contact with my lawyer, Mr. Gilligan.

Q. What did you do as a result of seeing them in there?

A. Well, as the result of that, we had another injunction drawn to restrain these negroes from moving in until this suit could come up.

Q. Did you, after talking with your lawyer in connection with these people being in the house, did you make any telephone calls?

A. You mean telephone calls,—oh, yes, 152, I called Mr. Horad, who I understand—no, 150, I mean, where Mrs. Stewart went in, I called Mr. Horad and—

Mr. Urciolo (Interposing): I object to what Mr. Horad may have said.

Mr. Gilligan: She may have said what she asked.

Mr. Urciolo: No objection to that.

By Mr. Gilligan:

Q. Do you know who Mr. Horad is?

A. I know he is a real estate dealer, that is all.

Q. Do you know his color?

A. No, I don't know his color, having never seen him.

Q. Did you or did you not get in touch with the United States Marshal in connection with the two women who were in the house?

A. I did.

Q. Just what happened?

A. I called the United States Marshal and told him—

Mr. Houston: I object.

The Court: Sustained.

By Mr. Gilligan:

Q. You got in touch with the marshal?

A. I got in touch with him.

Q. Did you later see the marshal go into the house?

A. I saw the marshal go in the house. Of course I didn't see him deliver the paper, but I saw him go in there.

Q. Can you tell the Court on what day the Stewarts, and whoever those people are in there with Mrs. Stewart, moved into the house?

A. I think it was the 9th they moved in.

Q. Of what?

A. Of August.

Q. 9th of August?

A. Yes, 9th of August.

Q. And can you tell the Court when the Rows moved in to their house?

A. Not definitely.

Q. Before or after the Stewarts?

A. After the Stewarts.

Q. So it would be after August 9th?

A. Yes, it would be after August 9th.

Q. And so far as the Savages are concerned at 134, they had not moved in until this morning?

A. They had not—they started to move in this morning.

Q. They did?

A. Yes, they were moving when I left.

Q. Have you seen Mr. Urciolo, owner of that property, have you seen him up around there?

64 A. Yes, sir, I have seen him around there.

Q. Have you observed any other colored people looking at the other three houses which he owns?

A. Yes, they were looking at 144.

Q. Does Mr. Urciolo own that?

A. As far as I know, he does.

Q. Have you seen any looking at 126?

A. Yes, I have seen them go in there—126.

Q. How about 152?

A. No, 152—I have not seen anyone go in there.

Q. But you have seen colored people other than those in the community looking at the houses?

A. Yes, sir.

Mr. Gilligan: I think that is all, Mr. Houston.

Cross-examination.

By Mr. Houston:

Q. Mrs. Hodge, when you first began thinking about buying on Bryant Street, what was the condition of the surrounding neighborhood as to improvements—as to being built up?

A. Well, it was fairly well built up. Second Street was not cut through.

Q. Second Street?

A. No, it was not cut through, and no houses, in fact there was a farm right there where the Lincoln apartments now stand, when we first went there; but the rest of the houses, it was all improved by nice houses.

65 Q. You mean that 154 and 156 and 158 had all been built?

A. No, they had not.

Q. They had not?

A. No, they had not, they went from the corner down, though, and included, we are 136—'40, '42, I think was the last—no, '40 was the last—those five houses. Below there there were six houses—were not built.

Q. All right; at the time you bought 140 was the last house; is that right—that is right?

The Court: She didn't understand your question.

By Mr. Houston:

Q. At the time you bought, 140 Bryant was the last house?

A. Yes, that was the last house.

Q. Going west?

A. Going west; no, it wasn't the last house, there were houses below that, but there was an interim of six houses that were not built, but 154 to Second, they were built.

Q. I see. 154?

A. Including 154.

Q. 154 to Second had been built?

66 A. They were built.

Q. Did you ask the real estate agent when you went to buy your house, 136 Bryant Street, as to whether the houses 154 Bryant Street down to Second Street were also covenanted?

A. No, I didn't ask anything about it.

Q. Were you concerned at that time in living in a neighborhood where all the people looked like white?

A. Why, certainly they looked white when I moved in that neighborhood, all the way down.

Q. All white?

A. All white.

Q. How do you know they were all white? Did you inquire of them as to whether they were white?

A. Certainly I could go and ask them, but they were like I am, and I know I am white.

Q. And as a matter of fact there are many negroes that cannot be distinguished from white, are there not?

A. I don't think so. There is always a look with regard to their eyes and nose that would give them away, as a rule. I won't say all the time, but as a rule.

Q. Well, you do say that there are some who may not be distinguished?

A. I presume that may be. I have never run up against one that I couldn't distinguish.

Mr. Urciolo: I didn't hear that last remark.

67 The Witness: I have never seen one that I could not distinguish. There may be some that I can't.

By Mr. Houston:

Q. We will give you an opportunity, Mrs. Hodge, before the case is over.

A. All right.

Q. Mrs. Hodge, what about Adams Street, had it been built up at the time you bought?

A. It was.

Q. That is, the 100 block of Adams Street on both sides had been built up?

A. Yes.

Q. Did you inquire whether the 100 block of Adams Street was covered by the same covenant?

A. I did not inquire about it. I was only concerned with Bryant Street where we were buying. In fact, we didn't even know anything about the covenant at the time, we didn't know there was such a thing in the city until Mr. Stafford I think his name was, agent for Middaugh and Shannon, told us—

The Court: Just answer the question.

The Witness: All right.

By Mr. Houston:

Q. So that when Mr. Stafford told you that this property had a covenant on it—

68 A. Yes.

Q. You say that had an inducement, that was an inducement to you to buy?

A. Certainly it was.

Q. Well now, if that was an inducement for you to buy, why didn't you ask him how many other houses had covenants on them?

A. I just don't suppose we thought about it; that is all.

Q. The point is, you did not ask?

A. I did not—no.

Q. The point is, when you bought you didn't know?

A. No, I did not.

Q. Now, you went into possession, let's see, in 1909?

A. Yes.

Q. Now, in 1909, where were the nearest obviously negroes living?

A. Down at Florida Avenue, below Florida Avenue on Second Street, as far as I can remember.

Q. Since that time the negro population has swept northward until it is now on Bryant Street?

A. Yes.

Q. Do you know of any white people or persons looking like whites, living between Florida Avenue and Bryant Street, except Jewish merchants and other merchants, west of First Street, except for what you say some of these houses on Bryant Street you are talking about?

A. West of First? On First, you mean?

Q. No, not on First, west of First.

A. West of First—no, I don't recall anybody living down there at all.

Q. So that west of First Street the negro population has swept solid northward up to and including Bryant Street, beginning at 154, and now is infiltrating, so to speak, into the 20 houses you are talking about; is that correct?

A. That is correct.

Q. Now, Mrs. Hodge, when did the negroes move in? How long was it that the negroes—how long has it been since the negroes have been living around back of you on Adams Street in the same square in which you are living?

A. Well, it has been—part have been there I would say around nine or ten years; the ones from 133 to First Street, to the alley; below that, they are the ones that have been I think about, well, between two and three years, I would say.

Q. Now, the people who are negroes and who have been living there two or three years live directly behind your house, do they not?

A. Yes, they do.

Q. Mrs. Hodge, when was the first time you had occasion to go to Mr. Gilligan with any of these properties on Bryant Street being rented to or occupied by or sold to negroes, how long ago?

A. I would say that has been about 18 years ago, probably; 18, possibly 20 years ago.

Q. Now, at any time during those eighteen or twenty years did Mr. Gilligan tell you how extensive the covenants

were, Middaugh & Shannon covenants in that particular neighborhood or area?

Mr. Gilligan: It is immaterial, if your Honor please, for her to answer that question; that is hearsay.

Mr. Houston. You are her counsel.

Mr. Gilligan: I can answer; put me on the stand.

Mr. Houston: It is a question of what action they took.

Mr. Gilligan: It is a question of what occurred to her.

Mr. Houston: That is right. I want to know what information she had.

The Court: Objection sustained.

Mr. Houston: Let me make this tender: I am not interested in the proposition as to what counsel said, just the words, I am interested in this lady's knowledge of her neighborhood, what she considered to be her neighborhood. I am interested in her knowledge regardless of what the source is. I wish to probe her source of knowledge,  
71 because I am pleading change of neighborhood, and that is, what activities she took to maintain her neighborhood in the state she says she wants it.

The Court: You think the Court should require her to tell the advice or information which her attorney furnished her?

Mr. Houston: If they don't stand on the ground of confidential communication, if he wants to raise the objection of confidential communication, I withdraw any further questions. I also understood, however, the matter of confidential communications was a privilege to be exercised by the witness, and that it wasn't a bar against opposing counsel to make inquiry.

Mr. Gilligan: If your Honor please, inasmuch as Mr. Houston puts it that way, my object always in these cases is to get before the Court all the facts that are there, and if Mrs. Hodge can answer the question as to what I said to her, what she ought to do—I have no objection to her doing so, because I want your Honor to have any facts.

The Court: You may answer.

By Mr. Houston:

Q. We are back now, Mrs. Hodge, about 20 years—excuse me for sitting down, it is not a discourtesy to you, please, but it is just that I am tired; otherwise I would be on my feet (sitting down at the counsel table).

A. I don't think it makes any difference.

72 I know when we first took this up with Mr. Gilligan, as far as I was concerned, I was practically the only one concerned in it. I asked Mr. Gilligan about the covenant and then he told me how far down they went on First Street, on both sides, and up from First up to Channing, First Street to Channing, from Bryant up to Channing, and that was of course when we first started in observing the negroes moving in.

Q. Now, did he also tell you that there — covenants, the same covenants, on Adams Street and on Flagler Place?

A. I think he told me that some were part of the covenant and some were not.

Q. Told you the houses back of you were covenanted?

A. Immediately back of me, to the alley, were covenanted.

Q. Yes. Now, Mrs. Hodge, when you found those houses immediately back of you, which were covenanted, went to negroes, did you take any action to prevent it?

A. No, I didn't because it didn't concern my street; it was not concerning me at all. I felt that way, Mr. Houston. Those people over there could do their own fighting; I was fighting for my own street and home.

Q. So that you were not concerned about the matter of Adams Street at all, even though it was the same covenant and meant that negroes were coming closer?

73 A. I felt that I had enough to think about and fight for on my own street. I felt that somebody over there could take the reins over there and fight that out.

Q. When you saw, Mrs. Hodge, that they were evidently not successful and the negroes were staying there, did you then take any action?

A. No, none at all.

Q. Had you ever taken any action?

A. No, I have not. I was concerned with my own house, my own street and neighbors.

Q. Now, Mrs. Hodge, you say you made no inquiry concerning the rest of the houses, say 154 down to Second Street?

A. No, sir.

Q. Now, 18 or 20 years ago—strike that. How rapidly did those houses go colored?

A. Well, they went rather rapidly after the first one was sold.

Q. Did you at that time make any inquiry to see whether those houses were under covenant?

A. Yes.

Q. Did you at that time go to the white owners who were remaining and ask them to join in to a restrictive agreement so that no more houses would be sold to colored?

A. Yes, sir.

Q. Did they agree?

74 A. Yes, sir.

Q. They did agree?

A. They agreed and they all signed, everyone along there everyone of the people who had covenants on their houses signed this restrictive covenant; it was for the term of 20 years, a 20-year covenant; is that what you mean?

Q. Yes. Let me get that clear, because it is very important. As I understand you, your statement is that when the first house was sold on Bryant Street you enlisted, you took action to try to get a restrictive agreement covering the whole square; is that correct?

A. I personally did not, Mr. Houston, but the men in the neighborhood did.

Q. Will you name them?

A. Possibly I can't name them. Mr. de Bettencourt.

Q. Who?

A. deBettencourt.

Q. Where did he live?

A. He lived in about 156, I think, in one of these porch houses, between 154—about 156.

Q. And where is he now?

A. I don't know whether he is in the city or not.

Mr. Gilligan: He is not living in that house, at any rate.

By Mr. Houston:

75 Q. He has moved?

A. Oh, yes, he has moved. Those houses were not covenanted then, you see.

Q. Yes; and who else?

A. I don't know that I can tell you the names of all of those people, because that was sometime ago.

Q. Did Mr. Hodge—

A. Yes, my husband, he was one of them.

Q. Do I understand that they were successful in getting a restricted agreement which stretched all the way down to Second Street?

A. Not at that time, I don't think.

Q. Did they ever have a restrictive agreement which stretched—

A. We had one already, everyone had signed, and then when a committee, whoever had attended to it, went back to get them to acknowledge their signatures, Mr. Costello struck a line through his name and wouldn't identify his signature, so, of course, there wasn't anything more to be done.

Q. So that there was no—

A. That stopped it.

Q. So that you had been defeated in trying to keep it, the 100 block of Bryant Street, white?

A. We were, so far as that was concerned, yes.

Q. And that was how long ago?

76 A. About twenty years ago, I think, between eighteen and twenty; it might have been a year or two more.

Q. As a matter of fact, Mrs. Hodge, there is no uniformity of houses, of types of houses, in that block, is there?

A. No.

Q. In other words, they have been built at different times?

A. Yes.

Q. Built in different styles?

A. Yes.

Q. And some have porches, some don't, some have light brick, some dark red brick?

A. Yes.

Q. Some have garages, some don't have garages; there is a wide variation of types of houses?

A. Yes, certainly.

Q. Now, do you know how long the houses—strike that.

Then, Mrs. Hodge,—well, you didn't consider whether you were taking a risk or not when you bought your house in 1909, that the neighborhood would change to colored?

A. Certainly not, because it was all white at that time.

77 Q. And you did nothing to guarantee yourself, at that time, that you bought the house?

A. We thought we were guaranteed with the covenant in the deed.

Q. That protected your house only, did it not?

A. Certainly, protected mine and all the rest that had it along there.

Q. I see, but you didn't make any inquiry to see whether all the rest had it, did you?

A. No, certainly not.

Q. Now, how many of the original purchasers are still living in the square, in the houses, that is, the 20 houses under the deed covenant?

A. Mr. Wrightsman, who lives at 120.

Q. Mr. B——

A. B. J. Wrightsman.

Q. 120 Bryant Street?

A. Yes.

Q. He is not a party to this suit, is he?

A. No, he is not.

Q. You contacted him, did you not?

A. Yes, sir, but his wife passed away before this suit was filed and he did not own the property.

Q. What?

A. He did not have the property in his possession at that time, when we signed it. Yes, I contacted him.

78 Q. And he has not joined since, has he?

A. No, he has not.

Q. All right, who else?

A. Mrs.—Miss Lanigan is still in the original house.

Q. Who is she, a daughter?

A. Daughter of Francis M.

Q. And Miss Lanigan's name is what?

A. Loretta.

Q. L-o-r-e-t-t-a?

A. L-a-n-i-g-a-n.

Q. Daughter of Francis, and her address?

A. I think it is 122.

Q. All right.

A. And Mr. and Mrs.——

Mr. Gilligan (interposing): If Your Honor please, I am pursuing the usual course by not objecting, but I don't see whether it makes any difference who was the original occupant of the houses, whether the houses are rented or whether they are new people, or anything about it, if they are all observing this covenant.

Mr. Houston: May I make a statement?

The Court: Yes.

Mr. Houston: I think it makes a great deal of difference, on changing the neighborhood. Neighborhoods change and decay like humans. In other words, there would be  
79 no place for the operation of equitable change unless I was able to show the neighborhood was gradually changed.

The Court: Go ahead.

By Mr. Houston:

Q. All right, Mrs. Hodge.

A. And Mr. Hodge and myself, Frederic E. and Lena A. Murray Hodge.

Q. Just a moment, Mrs. Hodge. That is 136.

A. Yes.

Q. Did you call another name I didn't get?

A. Those are the only three original occupants.

Q. Who did you contact, Mrs. Hodge, to be a plaintiff in this case? Who refused or failed to join in the case?

A. Well, Mrs. Johnson, who lives at 114, her daughter is interested, she wanted to become a plaintiff but the mother would not.

Q. Mrs. Johnson. All right. Now, then, there were the Wrightsmans?

A. Wrightsman.

Q. All right, who else?

A. Mrs. Garzoni.

A. And what is their address?

A. I don't know whether it is 157 or 159 Adams Street.

Q. No, no—the house?

A. The house next to me, 138.

80 Q. Now, in respect to the matter of neighbors, do you visit Mr. and Mrs. DeRita frequently?

A. Certainly, they are my neighbors.

Q. Does she visit you?

A. Why, certainly.

Q. And Mrs. Giancola?

A. Yes, we are very close friends.

Q. Does that mean that you visit back and forth?

A. Yes, sir.

Q. How frequently?

A. Well, you can't tell, exactly how many times.

Q. Approximately?

A. Frequently.

Q. Every week?

A. Yes.

Q. And how about the Marchegianis?

A. I was very friendly with them until they moved away, I don't see much of them now.

Q. Have you been to see them since they moved?

A. Oh, yes, they have been to my house several times.

Q. I said, have you been to see them?

A. No, I have not.

Q. How many other persons do you visit in this square?

81 A. I go up to see Mr. and Mrs. Wrightsman, or did, before she passed away, and Mr. Wrightsman visits, and I go next door to my neighbors at 138 to see them,—go down to see Mrs. Luskey at 148.

Q. Now, have you had any trouble with the negroes in the square?

A. No, we have not had any trouble with them.

Q. I am talking about the square for the 18 and 20 years they have been there.

A. No, we have not had any trouble.

Q. Never had any trouble with them?

A. No, indeed.

Q. Now, Mrs. Hodge, at the time that you were first moving into the square, as I understand it, you said that nobody was living there who looked like a negro, is that correct?

A. It certainly is.

Q. For 18 or 20 years there have been persons who looked like negroes living in this square?

A. Certainly, the ones down at the end of those 11 houses.

Q. You wouldn't call it any longer a white square?

A. Well, it is two-thirds white, or was.

Q. White? Or was? Let me ask: You call the square white, up to what extent?

A. 75 percent.

Q. 75 percent makes a square white?

82 A. Yes, I would say.

Q. After 75 percent it is no longer white, is that right?

A. No, not when there are negroes there.

Q. Even though 25 percent negroes are there, it is still a white square if there are 75 percent white?

A. That is the way I look at it.

Q. So, one-fourth is your dividing line?

A. Well, one-fourth down there,—yes.

Q. So there would not be any use of issuing an injunction unless you could get the negroes down to one-fourth in this square?

The Court: Isn't that a question for the Court?

Mr. Houston: I think it is a question for her. She is the one who is here asking to invoke the aid of the Court and if she feels it would be futile, it seems to me she is in a position where the request should be withdrawn, I don't—

Mr. Gilligan: If she thought it was futile, she would not be here.

Mr. Houston: I don't know.

Mr. Gilligan: That is right.

Mr. Houston: She may be doing a lot of thinking on it that she may not have done before.

The Court: The Court thinks that is a question for  
83 the Court to meet.

Mr. Houston: May I have an exception on the ground—

The Court: You have an exception.

Mr. Houston: I want to put my objection in the record on the ground that a court of equity or a court exercising an equity jurisdiction will not do a vain thing and if the defense can establish, out of the plaintiff's own mouth, on cross-examination that it would be futile to issue the injunction, I say the question is a proper question and should be allowed, sir.

By Mr. Houston:

Q. Now, Mrs. Hodge, this covenant is addressed simply to negroes, isn't that true?

A. Yes, sir.

Q. So it would make no difference to you if Chinese came there?

A. I wouldn't like it very well.

Q. But you could not do anything about it?

A. No, because this specifically says negroes or persons of negro blood.

Q. Or if Puerto Ricans and Cubans came in, Brazilians, no matter how dark they were, just so long as you could not establish the fact that they were negroes, you could not do anything about—?

A. Of course, they would not be negroes if they were Cubans, or anything like that.

Q. So that it is not color that you object to, am I right on that? It is not the color of the skin you object to?

A. Well—no. It is the race.

Q. I see. Now, suppose, Mrs. Hodge, it was a very, very light negro, say 99 percent so-called white blood. That would make no difference despite the fact that you say 75 percent would make the block white?

A. It would still be a negro, I think.

Q. And it would not make any difference?

A. No.

Q. If you got a person in the block who was supposed to be white and that person was undesirable, in the sense of untidy or something like that, you couldn't do anything about it?

A. No, certainly we couldn't.

Q. And you would prefer that untidy white person to a negro, no matter how educated or cultured?

A. As long as they are white, I would prefer them.

Q. No negro, no matter how, or whether he might be Senator or Congressmen, it would not make any difference to you?

A. It wouldn't make any difference.

Q. Even if the white man just came from jail, you would prefer him?

A. Because he is white and I am white.

85 Q. How do you know it?

A. Because all my ancestors have been white.

Q. How do you know that?

A. How do I know that?

Q. Yes.

A. All my descendants—they were all white.

Q. How do you know that?

A. How do you know that you are a negro?

Q. I know that, because you all say I am.

A. I know that you are, and I know that I am white.

Q. We won't pursue that.

Now, Mrs. Hodge, how many of these houses are occupied by their owners now, as distinguished from being occupied by tenants?

A. Well, 114 is occupied by the owner.

Q. Let's do down.

A. 114 is occupied by the owner. Do you want me to include the negroes, too?

Q. Yes, I don't object.

A. 116 and 118—

Q. You are going a little fast for me.

A. What is that?

Q. 114 is occupied by owners?

A. Yes.

Q. Will you tell me, if you know, when they bought?

86 A. Well, no, I can't tell you that; but it has been 20 years or more ago that they have been in there.

Q. Now, you say 116 is owner-occupied? And that colored—

Mr. Gilligan: Do you admit it?

Mr. Houston: No. I said she says—

The Court: Do not repeat her answer. Let her answer stand the way she put it.

Mr. Houston: All right. The only reason I did that, Mr. Gilligan and I were having a little side contest.

The Court: Leave the Court out of it.

By Mr. Houston:

Q. 118, Mrs. Hodge?

A. That is occupied by Mr. Rowe and his family.

Q. Now, tell me, just before the last white occupant in 116, was it an owner or a tenant?

A. 116, there was Mrs. Rooney, she was the owner.

Q. 118?

A. No, that was occupied—that was rented.

Q. All right, 120?

A. That is owner-occupied.

Q. That is the Wrightsmans?

A. Yes.

Q. 122?

A. That is owner-occupied.

87— Q. That is Lanigan. 124?

A. I think that is where Mr. Pearson lives, that is owned by Mr. Gorgiolo.

Q. How about Marchegiani?

A. No, that is Marchegiani, 124, and they own it.

Q. Now, are they there now?

A. No.

Q. Who is there now, tenant or what?

A. They have a tenant, white tenant.

Q. So 124 is tenant, is that right?

A. Yes.

Q. 126?

A. That is one of Mr. Urciolo's houses.

Q. Tenant or owner-occupied?

A. Tenant.

Q. 128?

A. Tenant—no, that is owned by Mr. and Mrs. DeRita.

Q. Now, 130?

A. It is owned by Mr. and Mrs. Giancola.

Q. 132?

A. That is tenant-occupied, occupied by Mrs.—Miss Skinner and her brother.

Q. 134?

A. Owner-occupied now by Mr. Savage.

Q. Now, just before Mr. Savage, what about that?

88 A. Well, that was occupied by Mrs. Pettit, and her family.

Q. Tenants?

A. Tenants, yes.

Q. All right. 136 is your house.

A. That is my house.

Q. 138?

A. Owned by Mrs. Garzoni, occupied by a tenant.

Q. 140?

A. Owned by Miss Pyles and occupied by a tenant.

Q. 142?

A. I don't remember the name, who owns it, but it is a tenant house, at any rate.

Q. Did you contact the owner to try to get the owner to come in to this suit?

A. Yes, sir, I did.

Q. How did you contact him?

A. I can't remember. If I remember, I will tell you.

Q. The owner did not come in?

A. No.

Q. 144?

A. That is tenant-occupied, I think that is one of Mr. Urciolo's houses, too.

Q. 146?

A. That is owner-occupied.

89 Q. Who is that?

A. The name is Perdue.

Q. Did you go to them to ask them?

A. I did, and he promised me half a dozen times to bring in his deed, but I don't know why he slipped up.

Q. But he did not join?

A. I got through asking him.

Q. He didn't join?

A. No.

Q. 148?

A. Mrs. Luskey's house, owner-occupied.

Q. And 150?

A. Occupied by Mrs. Stewart, I think, now.

Q. All right, before Mrs. Stewart.

A. Mrs. Anselmo, and she was a tenant.

Q. 152?

A. Well, I think that is another one of Mr. Urciolo's houses, tenant-occupied by a Mrs. Amoia, I think the name is, I can't tell you how to spell it, but that is the nearest I know.

Q. How many foreigners are in your block, persons of foreign descent?

A. Well, the DeRitas, Machegianis—

Q. DeRitas, just a minute.

A. Giancolas.

90 Q. Just a minute, the DeRitas; let's take 114, and go on with the names of the foreigners or natives, as far as you know.

A. As far as I know, they are natives.

Q. All right. And 116, natives or foreigners?

A. Natives, as far as I know.

Q. 118?

A. The same.

Q. 120?

A. They are, well they are natives, Washingtonians, have been for years, but not born here.

Q. I meant, Americans.

A. Well, they are Americans.

Q. The Wrightsmans are Americans?

A. Yes.

Q. And 122, the Lanigans?

A. They are Americans.

Q. Now, 124?

A. Well, they are Italians, the Marchegianis.

Q. 126?

Mr. Gilligan: That is Mr. Urciolo's.

The Witness: That is Pearson, they are Americans, too.

By Mr. Houston:

Q. Are they tenants, or what?

A. They are tenants.

91 Q. 126 is a tenant. 128?

A. Mrs. DeRita, Mr. and Mrs.—they are Italians.

Q. They are. 130?

A. Mr. and Mrs. Giancola, and they are Italians.

Q. 132?

A. Americans.

Q. 134?

A. Well, I suppose they are Americans, too.

Q. 136 and 138?

A. 138, they are Assyrians.

Q. 140?

A. Americans.

Q. 140 you said were Americans?

A. Yes.

Q. 142?

A. 140, yes. 142, they are Americans.

Q. Just to get straightened out, I am not criticising, I am trying to write this out, 140 is American and 142?

A. Yes, both Americans.

Q. 144?

A. Americans.

Q. Now, 146?

A. Americans.

Q. What was—I got it—148?

A. Americans?

92 Q. 150?

A. Well, they are negroes, I guess they are Americans.

Q. 152?

A. They are Italians.

Q. Now, American Indians—

Mr. Gilligan: If Your Honor please, are we going to go—

Mr. Houston: I am going to make a claim that M. R. Hurd is an Indian.

The Court: Let's hear the question, then I will hear your objection. What is the question?

By Mr. Houston:

Q. Is there anything barring American Indians for occupancy?

A. Not that I know of, I don't.

Q. Although they are of copper colored skin, you have no objection to them?

A. No, they are Indians, they are Americans.

Q. Your sole objection is that they are negroes?

A. Yes.

Q. Now, there was a time when you say very few negroes in the neighborhood, isn't that true, Mrs. Hodge?

A. Yes.

Q. That was when you bought?

S. That was when we first moved out there, there was very few in the neighborhood.

93 Q. Very few?

A. Very few.

Q. Were you there at the time LeDroit Park had a fence around it?

A. No, I was in the city.

Q. Were you there at the time when Adams Street had not been cut through, First Street to North Capitol?

A. No.

Q. It had been cut through when you moved there?

A. Yes.

Q. But you said, there were no negroes from north of Florida Avenue to Second Street?

A. No.

Q. Practically no negroes were seen in that vicinity?

A. Very, very few, once in a while, but not as a rule.

Q. Now, did you ever go to McMillan Park, more to walk or just to take air, so to speak?

A. Yes, a good many times.

Mr. Houston: If Your Honor please, on the plat, first let me ask if Your Honor is familiar with that neighborhood up by Soldier's Pome?

The Court: I have some knowledge of that community there, yes.

Mr. Houston: McMillan Park is right across from Bryant Street, in the 100 block. I think it shows on that map (indicating). We have another map which we shall introduce at the proper time.

94

The Court: I do not believe it is shown.

Mr. Gilligan: It is a Government reservation, part of the filtration plant.

Mr. Urciolo: Your Honor, this has it all marked, it might show you (indicating map).

Mr. Gilligan: If that is the one that was used in the Adams Street case, we will be very glad to have it.

Mr. Houston: This (indicating) is McMillan Park.

Mr. Gilligan: Right now, Mr. Houston, all this is McMillan Park (indicating).

Mr. Houston: Yes.

Mr. Gilligan: A covered reservoir has been put under there.

Mr. Houston: That is right.

Mr. Gilligan: They hope that soon it will be restored.

Mr. Houston: This is the pipe yard that Mrs. Hodge talked about, the D. C. Pipe Yard.

Mr. Gilligan: That is a garage, this is a yard (indicating).

Mr. Houston: There was another she was talking about, a repair shop or garage over here (indicating). That is on the east of the pumping station. Here (indicating) is the old pumping station. The old thing has been there 95-96 for years; and the yard is west of the pumping station, and right here (indicating), I think, is the old yard.

The Witness: Right at the corner of 4th and Bryant.

By Mr. Houston:

Q. Right across from the school?

A. Across from the school, yes.

Q. They are the houses—these are the houses on Bryant (indicating) that you said were occupied by negroes?

A. Yes.

Mr. Gilligan: All west of it (indicating).

Mr. Houston: The houses west of the District garage, these are the houses marked in brown, they are negro, and the green here were—

Mr. Urciolo: All of the green are white.

Mr. Houston: This is not the present occupancy. This is the occupancy as of about four years ago.

Mr. Urciolo: '42.

Mr. Gilligan: About '42.

Mr. Houston: This is Defendant's Exhibit 13, previously marked.

Mr. Gilligan: So far as Bryant Street is concerned, it is correct, except where it is marked there—

Mr. Houston (interposing): Except the parts that are claimed to be colored?

97 (Witness Mrs. Hodge leaves stand temporarily.)

98 Thereupon DANA H. BROCKWAY was called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. State your full name, please.

A. Dana H. Brockway.

Q. What is your business?

A. Secretary-treasurer, Realty Appraisal and Title Company.

Q. Realty Appraisal and Title Company?

A. Yes.

Q. Did you have occasion to settle the cases of Robert H. Rowe and his wife, and Herbert B. Savage and his wife and Pauline B. Stewart as to lots 113, 144 and 136 in square 3125?

A. Yes.

Q. Did you call attention to these people—call their attention to the fact that this deed covenant covered each of those houses against occupancy by colored people?

99 A. I will have to refresh my recollection by referring to the cases (examining records).

On the 134 Bryant Street—

100 The Witness: I did refresh my recollection from examining the case. I am sure that I referred to the covenant and restrictions of record.

By Mr. Gilligan:

Q. Did you do that with the other two cases, likewise?

A. Yes.

Q. You also were the Notary Public, were you not?

A. Yes, sir.

Q. And you took the acknowledgment of these three different people, Savages, Rowes and Stewarts to the deeds of trust securing Mr. Urciolo's second trust?

A. I believe so.

Q. I will assure you that you did.

A. I will have to look at the trust to be dead sure. My recollection is, though, that I also executed them.

Q. Then I may take it for granted that you did and for the record I will ask you if you observed the color of these people—did you?

A. Yes, sir.

Q. What was their color?

A. The purchasers of these three houses were colored.

Q. Definitely so?

A. Well, I would consider them colored people.  
101 They may have been of mixed blood, or maybe others; for my observation, they were colored.

Q. Negroes?

A. Yes, sir.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Brockway, how many cases do you settle a day?

A. Well—

Q. Usually, approximately?

A. I guess an average of three, maybe four a day, some days I don't settle any, some others, I do.

Q. Approximately how long ago were these cases settled, just approximately, Mr. Brockway?

A. About March 29, '45.

Q. I wish you would answer, please, from memory. I said approximately—ten years, five months?

A. These cases are all within the last six months or a year.

Q. The last six months or a year?

A. Yes.

Q. Then approximately—then if you have three cases a day, you have approximately a thousand cases in the last year?

A. That is your question?

102 Q. Roughly.

A. Yes, I would say so. I think our records will bear me out.

Q. Therefore, Mr. Brockway, you probably would not be able to even recognize who the people are, would you?

A. That is reasonably so. I may recognize some. I have a knack of remembering faces. Sometimes it takes me a week or so to remember who they were.

Q. Consequently, you certainly cannot be dead sure as to whether you explained to these people that there were restrictive covenants on there or not?

A. Oh, yes, because I go into that, because it is a matter of record,—you see, our obligation is on a certificate of the record, what the record shows.

Q. Suppose the parties do not come in?

A. Then, of course, we take it for granted, we go ahead and file the papers. If we are not on inquiry, we are not under obligation not to record the papers, because the contract—

Q. (Interposing:) In other words, if no questions are asked, you make no assertions?

A. Exactly.

Q. One other thing, Mr. Brockway. In your own dealings at the title company, have you ever found a person who bought property there, that you had your doubts, 103 however small, that they—whether they are negro or white?

Mr. Gilligan: I object to this line of questioning.

The Court: Sustained.

Mr. Urciolo: If Your Honor please, the question is that these people are white—

The Court: I understand the question.

Mr. Houston: If Your Honor please, may I also ask, it seems to me that the competence of the witness to identify and distinguish certainly is material. In my opinion, if one says they are white—

Mr. Urciolo: This is cross-examination.

The Court: The Court has ruled.

Mr. Urciolo: Thank you.

By Mr. Urciolo:

Q. Then, will you say this, Mr. Brockway: You are absolutely positively, then, that the people who purchased these houses are negroes?

A. In my opinion, they are negroes.

Q. How do you arrive at that conclusion, Mr. Brockway?

A. I guess there is a distinction between black and white that is obvious from our own conception of people.

Q. What are they? That is what I wanted to find out. For example, I maintain sometimes it is impossible, what is your criterion as to the color of skin—what is it?

104 A. I don't know that I am qualified to go into the breeds of the Caucasian race.

Q. In other words, then, you admit you are not qualified and, therefore, you may be mistaken?

A. I admit nothing.

Q. Did you say you were not?

A. I don't know that I am qualified to trace the blood lines of the Caucasian race; but I can distinguish between white and colored from my associations; and in relation to the obligations I have to disclose the covenants. I may have made mistakes.

Q. Have you ever been in doubt?

A. On one or two occasions I have been in doubt.

Mr. Urciolo: Thank you, Mr. Brockway, that is all.

Mr. Gilligan: That is all.

Mr. Houston: I wanted to address my remarks  
105-106 to the Court and point out the fact that Mr. Brockway testified as to the defendants in 29,943. He has not testified concerning any defendant in 26,192, other than because the cases are consolidated.

I have no questions.

113 Whereupon LENA A. MURRAY HODGE resumed the stand and testified further as follows:

Cross-examination (Resumed).

By Mr. Houston: -

Q. Mrs. Hodge, we were pursuing a question of change of neighborhood yesterday. Let me ask you this:

114 When you bought your house, I think it was in 1909, is that correct?

A. Yes, sir.

Q. Had anybody else occupied it prior to you, or were you the first one?

A. The first one, the original owners.

Q. Had the other houses been built just about the same time that you mentioned, down to 140, or were they already occupied?

A. There were five houses from 132 to 140, but the houses from 114 to 130 had been built about, I think to the best of my knowledge, about three or four years previous to that.

Q. 132 to 140 built in 1909, is that what you would say?

A. Yes, sir, they were built in 1909. In fact, our house wasn't quite finished when we bought it.

Q. Now, at the time that you first bought,—no, strike that.

At the time you first moved into the neighborhood, were there any Italians in the 100 block of Bryant Street?

A. No, not that I recall.

Q. At the time that you first bought, were there any Assyrians in the 100 block of Adams Street?

A. No, there were not.

115 Q. Now, at that time that you testified, were the houses in the 100 block of Adams Street occupied by young people or people under middle age, would you say?

A. Well, I should say rather mixed ages from young ones to old ones. I wasn't very familiar with that neighborhood, those people, because I simply didn't know anything or anybody there and I didn't go around there; but I would say probably of our age, older and younger.

Q. Would you say that predominantly, when you moved into Adams—I am sorry, when you first moved into Bryant Street, the 100 block of Bryant Street, I have got some new teeth, you notice.

The Court: That is all right, well, get along.

By Mr. Houston:

Q. Would you say that the 100 block of Bryant Street was occupied by mostly young married couples, predominantly a community of young married couples?

A. Predominantly, they were.

Q. A community of young Americans?

A. Except the ones really from First Street down that way were older people, it was just about 50-50, I would say.

Mr. Gilligan: I am inclined to object to this line of questioning because I don't see that it adds anything to the facts in the case on which the decisions must be based.

116 It is not a question as to whether there were Italians living there at that time, the questions before this Court are whether in these 20 houses under deed covenant prohibiting negroes or colored people from occupying the houses, either by sale, lease and so on, whether they are now colored, or whether they are now white.

It does not make any difference whether they are 90 years or 15 years old, what difference does it make? Therefore, I am inclined to object to this line of questioning.

Mr. Houston: May I read from this authority (exhibiting document).

This is entitled, "Growth and Structure of American Cities," a study by the Federal Housing Administration, and I am reading from page 121. This is the same authority cited to the Court in *Hundley vs. Gorewitz*, and I think the Court received that:

"Forces constantly and steadily at work cause a deterioration of existing neighborhoods. A neighborhood composed of new houses in the latest model, all owned by young married couples with children, is at its apex. At this period of its vigorous youth, the neighborhood has a vitality to fight off the disease of blight. The owners will strenuously resist the encroachment of inharmonious forces because of their homes and their desire to maintain a favorable environment for their children. The houses, being in the newest and most popular styles, do not suffer from the competition of any superior houses in the same price range, and they are marketable at approximately their reproduction costs under normal conditions. Both the buildings and the people are always growing older. Physical depreciation of structure and the aging of families constantly are lessening the vital powers of the neighborhood. Children grow up and move away. Houses with increasing age are faced with higher repair bills. This steady process of deterioration has been signed by obsolescence. A new and

117

more modern type of structure relegates these structures to the second rank. The older residents do not fight too strenuously to keep out inharmonious forces. A lower-income class succeeds the original occupants. Owner-occupancy declines as the first owners sell or move away or lose their homes by foreclosure. There is often a sudden decline in value due to a sharp transition in the character of neighborhood or to a period of depreciation in the real estate cycle. These internal changes due to depreciation and obsolescence in time cause shifts in the locations of neighborhoods. When in addition there is poured into the center of the urban organism a stream of immigrants or members of other racial groups, these forces all will cause dislocations in the existing neighborhood pattern. The effect of these changes vary according to the type of neighborhood and can best be described by discussing each one in turn."

118

Now, at that particular point, I will not go ahead and extend that reading, unless Your Honor wishes me to.

The Court: Well, I take it, of course, the objection is that it is not proper cross-examination. It is your defense—

Mr. Houston: Well?

Mr. Gilligan: I should say it is both, if Your Honor please; not proper cross-examination, but in addition, where in the world did this become an authority in the courts? He read to me some cases where the courts have accepted something, to avoid our objection.

Mr. Houston: That was from *Hundley vs. Gorewitz*.

Mr. Gilligan: It isn't—

The Court: It is your objection, as I understand it, that it is not proper cross-examination?

Mr. Gilligan: Both not proper, and also entirely out of order.

Mr. Houston: May I make this statement:

She has testified without objection concerning her purchasing a house, concerning the neighborhood when they originally moved in there. I am simply carrying it out now and developing that in the cross-examination which has already been introduced without any objection whatsoever.

119 The Court: I will sustain the objection upon the ground that it is not cross-examination and reserve other consid-

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## TRANSCRIPT OF RECORD

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### Supreme Court of the United States

OCTOBER TERM, 1947

No. 72

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J. D. SHELLEY, ETHEL LEE SHELLEY, HIS WIFE,  
AND JOSEPHINE FITZGERALD, PETITIONERS,

vs.

LOUIS KRAEMER AND FERN W. KRAEMER, HIS  
WIFE

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF MISSOURI

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PETITION FOR CERTIORARI FILED APRIL 21, 1947.

CERTIORARI GRANTED JUNE 23, 1947.



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No.

J. D. SHELLEY AND ETHEL LEE SHELLEY, HIS  
WIFE, AND JOSEPHINE FITZGERALD, PETI-  
TIONERS,

vs.

LOUIS KRAEMER AND FERN E. KRAEMER, HIS  
WIFE

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF MISSOURI

## INDEX

	Original	Print
Record from Circuit Court of the City of St. Louis, Mis- souri	1	1
Stipulation as to facts in the transcript of record	3	1
Transcript of the record	6	4
Amended petition	6	4
Order to show cause and temporary restraining order	10	8
Amended return to order to show cause and answer	11	9
Minute entries of argument	21	17
Stipulation as to exhibits accompanying, and testi- mony in, the transcript of record	22	18
Statement of evidence	23	18
Appearances	23	19
Plaintiff's evidence	23	19
Offer in evidence	23	19
Testimony of Mathilda Sohlmann	26	20
William Wnukowski	30	24
Emil Koob	36	30
Martin C. Seegers	62	58
Mrs. George A. Edelin	68	64
Emil Koob (recalled)	73	68

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 3, 1947.

## Record from Circuit Court of the City of St. Louis, Missouri—Continued

## Transcript of the record—Continued

## Statement of evidence—Continued

	Original	Print
Defendant's evidence		
Testimony of Robert B. Woods	80	76
Stipulation as to testimony of M. A. Burdzy	80	76
Testimony of Robert A. Bishop	85	81
Ethel Shelley	86	81
James T. Bush	118	114
Hearing on merits	132	128
Plaintiff's evidence	133	129
Testimony of Joseph Lo Chiona	133	129
Frances Gumming	135	130
Motion to dismiss and denial thereof	138	133
Defendant's evidence	139	134
Statement of Fannie Cook	139	134
John T. Clarke	140	134
Lillian Moser	141	135
Plaintiff's request for findings of fact and declarations of law	141	136
Order dismissing petition	146	139
Findings of fact and conclusions of law	146	140
Memo opinion	149	142
Plaintiff's motion for new trial	152	144
Order overruling motion for new trial	156	148
Notice of appeal	156	148
Memorandum of the Clerk as to service of notice of appeal	157	148
Stipulation approving transcript of record	157	148
Clerk's certificate (omitted in printing)	158	
Proceedings in Supreme Court of Missouri	159	149
Extracts from respondent's brief	159	149
Argument and submission	163	153
Opinion, Douglas, J.	163	153
Judgment	171	160
Motion for rehearing	173	160
Motion to modify	180	168
Order overruling motions for rehearing and to modify opinion	182	
Order staying mandate	182	169
Clerk's certificate (omitted in printing)	183	169
Designation of record	184	170
Order allowing certiorari	172	171

[fols. 1-3]

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,  
MISSOURI**

Wm. W. Koerner, Judge Div. No. 3

No. 91283 In Equity

**FERN E. KRAEMER and LOUIS W. KRAEMER, her husband,  
Plaintiffs,**

**vs.**

**J. D. SHELLEY and ETHEL LEE SHELLEY, his wife and  
Josephine Fitzgerald, Defendants.**

**STIPULATION AS TO FACTS IN TRANSCRIPT OF THE RECORD**

For the purpose of the transcript of record on appeal it is stipulated by and between counsel for plaintiffs and defendants that the following are facts and were in evidence on the trial of the case:

1. The plaintiffs own the property known and numbered as 3542 Labadie avenue, and are the ultimate grantees and successors in title to Emma G. Thomson and William I. Thomson, the chain of title being as follows:

Book 1376, page 26, from Lennox to W. I. Thomson.

Book 2360, page 483, from W. I. Thomson to Hoppe.

Book 2377, page 75, from Hoppe to Emma Thomson.

Probate estate No. 58427, by will of Emma Thomson to William I. Thomson.

Book 4304, page 450, William I. Thomson to Roy Thomson

Book 4461, page 387, Roy Thomson to William I. Thomson.

Probate estate No. 66265 by descent from William I. Thomson to Fern Kraemer.

Book 5183, page 489, Fern Kraemer to Hazel Chapman.

Book 5183, page 490, Hazel Chapman to Louis W. Kraemer and Fern Kraemer.

1a. The defendants own and occupy property known and numbered as 4600 Labadie avenue, are the ultimate grantees

and successors in title to one Samuel Werner, and the chain of title from Werner to the defendants is as follows:

Book 2015, page 221, Steinlege to Samuel Werner.

Book 2424, page 402, Samuel Werner to Samtine Real Estate Co.

Book 3706, page 275, Samtine Real Estate Co. to Roberson.

[fol. 4] Book 3645, page 518, Roberson to Barnes.

Book 4379, page 291, Barnes to Sohlmann.

Book 6347, page 455, Sohlman to Paulis.

Daily No. 124 dated 9/10/45, deed, Paulis to Geraldine Fitzgerald.

1b. Defendant Geraldine Fitzgerald deeded to the defendants Shelley on September 11, 1945.

1c. The restrictive covenant was signed by S. Werner.

1d. The property belonging to the plaintiffs and the property belonging to the defendants are both located in city blocks 3710b and 3711b of the City of St. Louis, Missouri.

1e. When this restrictive agreement was signed there were 39 owners of land in the district sought to be restricted, being city blocks 3710b and 3711b, who owned 57 parcels of land. 30 landowners owning 47 parcels of land signed the restriction agreement. The total frontage on Labadie avenue comprising the district sought to be restricted was 1569 feet, 8 inches; and the property owned by the 30 owners signing the agreement had a frontage totalling 1245 feet, 43/4 inches. 9 owners of 10 parcels, comprising a total frontage of 324 feet, 31/4 inches, did not sign the agreement.

2. It is further stipulated and agreed that the following finding of fact by the Court may be considered as substantiated by the evidence in regard to the matters therein stated, to-wit:

"6. On the South side of Labadie avenue, in the immediate vicinity of 4600 Labadie, the houses, numbered from east to west, the race and length of their tenancy of their respective occupants, and whether or not the owners in 1911 signed the restriction, are as shown by the following table.

[fol. 5]

House Number	Signed Restriction	Occupancy
4556	No	White, within memory of witnesses
4560	No	White, within memory of witnesses
4562	No	Negro for 23 years
4600	Yes "S. Werner"	White to October 9, 1945
4604	Yes	White, within memory of witnesses
4606	No	Negro to 1944, then white
4608	No	Negro since 1882
4610	No	Negro 30 years or more
4614	No	Negro at least 23 years

Those numbers that have been occupied by Negroes have been occupied by successive owners and tenants, some moving out and others moving in. No property in the district, other than as shown in the foregoing table, is now occupied by Negroes or ever has been, so far as the evidence shows."

3. It is further stipulated and agreed that said restriction agreement does not contain the lot number of any parcel or lot of ground mentioned therein, nor does it contain any reference to any other recorded document wherein such information may be found.

4. It is further stipulated and agreed that, at the time said restriction agreement was signed, the evidence did not show that two of the persons signing it had any property, or any interest therein, located in said city blocks mentioned therein.

5. It is further stipulated and agreed that the equivalent of twenty-four 25-foot lots, fronting on the west line of Taylor avenue and situated in the east ends of City Blocks 3710B and 3711B, are not restricted; and that said lots are separated from other lots in the east end of said blocks which are restricted by an alley fifteen feet wide.

**Transcript of the Record**

**AMENDED PETITION—October 18, 1945**

1. Plaintiffs state that they are the owners of property located in City Blocks 3710b and 3711b, more specifically described as 4532 Labadie avenue, of the City of St. Louis, State of Missouri; that Fern E. Kraemer acquired the title to said property by descent from William I. Thomson, who took by deed from Roy H. Thomson, and who died intestate in 1927.

2. Plaintiffs further state that they are successors in title to William I. Thomson and Emma Thomson who were signatories on a certain instrument dated the 16th day of February, 1911, and are successors to two of the parties of the first part mentioned in said agreement, and that their authority to prosecute this action is based upon the provisions of that instrument.

3. Plaintiffs state that said instrument was filed of record in the office of Recorder of Deeds of St. Louis on the 17th day of February, 1911, and is recorded in Book 2400 on page 488 of said records.

4. Plaintiffs state that said instrument is a "Restriction Agreement", the purpose of which and the legal effect of which is to bind the signatories, their heirs, assigns, legal representatives and successors in title to restrict the property owned by each of said signatories against sale to, or use or occupancy by people not wholly of the Caucasian race and to prohibit by the agreement of the signatories the sale to, leasing or renting to, or transferring by any means whatever, said property to persons of the Negro or Mongolian race.

[fol. 7] 5. Plaintiffs state that said instrument is also signed by one Samuel Werner; that said Samuel Werner was, on the 16th day of February, 1911, and for sometime thereafter, the legal title holder of a certain piece of property in City Block 3711b of the City of St. Louis, being more specifically described as 4600 Labadie avenue.

6. Plaintiffs state that the above mentioned restriction agreement, among other things, contained the agreement

of the parties thereto that none of the property in said city blocks, 3710b and 3711b, by them owned should be sold, conveyed, leased, or rented to persons not wholly of the Caucasian race, or to persons of the Negro or Mongolian race; that none of the parties thereto or their successors should deliver possession to or permit to be occupied by any of the said parcels of land belonging to the parties of the first part in said agreement, a Negro or Negroes; that the signatories thereto agreed that their mutual promises in said agreement contained should be binding on the respective heirs, assigns, legal representatives and successors of such signatories.

7. Plaintiffs state that said agreement provided that it should remain and be in force and effect for a period of 50 years from the date thereof, unless sooner terminated by writing executed and acknowledged by the owners in fee of all of the property therein included; that such agreement has not been so terminated in writing or otherwise and is still in full force and effect.

8. Plaintiffs state that it was intended by the parties, and it was expressly agreed, that such agreement and such restrictions on their property should attach to and run with each of the parcels of land belonging to the parties and described in said agreement, and that such agreements between the parties were covenants and did run with the land and do now run with the land; that the signatures of the parties thereto were duly acknowledged by a notary public and that said agreement was duly recorded in the office of recorder of deeds of the City of St. Louis, state of Missouri.

[fol. 8] 9. Plaintiffs state that Samuel Werner, signatory to the agreement aforesaid and owner of the property described as 4600 Labadie avenue, did, in the month of April, 1911, transfer said parcel to Samtine Real Estate Company; that thereafter, on September 6, 1922, Samtine Real Estate Company conveyed said property to Frank R. Roberson; that thereafter, on September 13, 1922, the said Roberson conveyed the said property to Pearl G. Barnes; that thereafter, on February 1, 1926, the said Pearl G. Barnes conveyed the said property to John and Mathilda Sohlmann; that thereafter, on May 18, 1945, the said John and Mathilda Sohlmann conveyed the said prop-

erty to Oscar Paulis and Lorraine Paulis; that thereafter, on September 10, 1945, the said Oscar Paulis and Lorraine Paulis conveyed said property to Josephine Fitzgerald, defendant herein; that thereafter, on September 11, 1945, defendant Josephine Fitzgerald conveyed said property to J. D. Shelley, defendant herein, and Ethel Shelley, his wife, defendant herein.

10. Plaintiffs state that J. D. Shelley and Ethel Shelley, his wife, defendants herein, are claiming to be the owners of said property and are claiming to have a deed to said property and are exercising acts of ownership over the said property and are collecting rents through their agent for a portion of said property.

11. Plaintiffs state that defendants J. D. Shelley and Ethel Shelley, his wife, are Negroes and are not wholly of the Caucasian race.

12. Plaintiffs state that defendants J. D. Shelley and Ethel Shelley, his wife, are threatening to move their belongings into said property known as 4600 Labadie avenue, and have indicated their intention to take up their residence in said property, all in violation of said restriction agreement aforementioned.

13. Plaintiffs state that the deed of conveyance to defendants J. D. Shelley and Ethel Shelley is in violation of said restriction agreement and is therefore void, and that defendants Shelley have no right at law to acquire the title to or reside in, or take possession of said property,

[fol. 9] 14. Plaintiffs state that the defendants Shelley are the ultimate grantees or assigns, or assigns and successors in title, to Samuel Werner, signatory to the restriction agreement aforementioned:

15. Plaintiffs state that the ownership or occupancy or both of the defendants Shelley of said property is in violation of the terms of said restriction agreement and that as a direct result thereof plaintiffs will suffer irreparable injury and irremediable damages to their property; that unless defendants Shelley be restrained from owning or occupying, and both owning and occupying, said property, plaintiffs will in the future suffer irreparable injury and irremediable damage to their property; that unless de-

defendant Josphine Fitzgerald be restrained from conveying, during the term of the restriction agreement aforesaid, said property to persons not wholly of the Caucasian race or to persons of the Negro or Mongolian race, plaintiffs will suffer irreparable injury and irremediable damages to their property.

16. Plaintiffs state that they have no adequate remedy at law.

17. Plaintiffs state they have filed their surety bond executed by the New Amsterdam Casualty Company, a surety corporation, as surety.

Wherefore, plaintiffs pray the Court for relief as follows:

a. That this honorable Court forthwith issue its temporary restraining order restraining the defendants herein, J. D. Shelley and Ethel Shelley, his wife, from taking possession of or moving their belongings into or residing in said property known as 4600 Labadie avenue.

b. That this honorable Court forthwith issue its order commanding defendants to show cause, if any they have, why a temporary injunction should not be issued restraining and enjoining the defendants Shelley from entering into, or taking possession of, or residing in said property; [fol. 10] that this Court issue its order commanding defendant Josphine Fitzgerald to show cause, if any she has, why a temporary injunction should not be issued restraining and enjoining her from conveying during the period of the restriction agreement aforesaid, said property known as 4600 Labadie avenue to persons not wholly of the Caucasian race, or to persons of the Negro or Mongolian races.

c. That upon final hearing herein this honorable Court make permanent and perpetual its injunction restraining and enjoining defendants Shelley herein from taking possession of, or entering into, or residing in, the property known as 4600 Labadie avenue; that the defendant Josephine Fitzgerald be restrained and enjoined from conveying during the period while the restriction agreement aforesaid remains in force and effect, said property in violation of the agreement aforesaid.

d. That the title to said property be divested out of defendants J. D. Shelley and Ethel Shelley, his wife, and

vested in their immediate grantor or grantors, or in such persons or persons wholly of the Caucasian race, and not of the Negro or Mongolian race, as the Court may determine.

e. That said restriction agreement above mentioned be declared by the Court to be valid and in full force and effect.

f. That the Court make such further orders and decrees as to the Court seem just and proper.

g. That the defendants have judgment for their costs.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER—  
OCTOBER 9, 1945

Now at this day come the plaintiffs by their attorney and present to the Court a verified petition this day filed, praying among other things for the issuance of a temporary [fol. 11] restraining order and a temporary injunction, and the Court having seen and examined the same, and being sufficiently advised thereof, upon the motion of attorney for the plaintiffs doth order that the defendants be and appear in this Court and in Division #3 thereof on Thursday the 11th day of October, 1945, at 10 a. m., and then and there to show cause, if any there be, why a temporary injunction should not be granted as prayed for in plaintiffs' petition.

It is further ordered that, until the hearing of said motion and order herein, conditioned upon the plaintiffs giving a good and sufficient bond in the penal sum of \$500, with surety to be approved by the Court, judge or clerk thereof in vacation, which said bond in the penal sum of \$500 with New Amsterdam Casualty Company as surety is now approved and ordered filed, the defendants J. D. Shelley and Ethel Shelley, his wife, do absolutely desist and refrain from taking possession of, or entering into, the property known as 4600 Labadie avenue.

And it is further ordered that a copy of this order be served on each defendant herein named at least 24 hours before the time fixed for hearing the motion as aforesaid.

Dated at St. Louis, Missouri, this 9th day of October, 1945.

## IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

AMENDED RETURN TO ORDER TO SHOW CAUSE AND ANSWER—  
 NOVEMBER 1, 1945

Now, this day, come the defendants herein and for their return to the order to show cause, and for answer to the petition of the plaintiffs, state the following:

1. Defendants J. D. Shelley and Ethel Lee Shelley admit that they are the owners of property located on the south side of Labadie avenue, between Taylor avenue and Cora [fol. 12] Avenue, in the City of St. Louis, Missouri, and known and numbered as 4600 Labadie avenue; and admit that they acquired the same from the defendant, Josephine Fitzgerald, for a good and valuable consideration; that they are exercising the rights of ownership in and over said property and are now, and were at and prior to the time when this action was brought occupying said property as their home; but all of the defendants herein aver that the sale of said property to the defendants Shelley and wife by the defendant Josephine Fitzgerald was in every way valid and lawful, and was in keeping with the property rights of all of said defendants in reference to said property, its transfer and ownership, and according to law.

2. Defendants state that they have no knowledge of the ownership of property claimed by the plaintiffs in city blocks 3710B and 3711B, and therefore neither affirm or deny said claims.

3. Defendants further state that they have no knowledge of the ownership of other parcels of property located in said City blocks as set forth in the plaintiff's petition, and they therefore neither admit nor deny said allegations.

4. Defendants further state that they had no knowledge of the existence of the restrictive agreement pleaded by the plaintiffs prior to the sale and transfer of said property to the defendants J. D. Shelley and Ethel Lee Shelley; that they relied upon the fact which was common knowledge, that for more than fifteen years Negroes or colored people had owned and occupied as homes several parcels of property in the block and upon the street where the property in question in this suit is located; that their knowledge of

the existence of said restrictive agreement against the sale to and occupancy by Negroes of the property located in the city blocks aforesaid has been learned since the purchase and transfer of their said property in the month of September, 1945.

5. Defendants further state that said restrictive agreement [fol. 13] is and was void and of no effect for the following reasons, to-wit:

(a) Said agreement is contrary to the provisions of section 42 of title 8 of the United States code, which said section reads as follows:

"Section 42. Property rights of citizens. All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

(b) That all of the defendants are citizens of the United States and entitled to enjoy the above rights in reference to the ownership of real property in Missouri as set forth in said section; that there is no statutory law in Missouri in any manner restricting the sale of real property to white citizens, and that no court in Missouri has ever decided a case in which the right to own or use real property as a place of residence has ever been denied to white citizens of this state by reason of any provision in any private contract, or otherwise, but that the free uses of property as homes are accorded to all white citizens in this state, and said rights are upheld by the courts in this state save only as to restrictions regulating the location and character of buildings, and the uses thereof, such as conducting rooming houses, slaughter houses, soap factories, distilleries, livery stables, tanneries, machine shops, liquor saloons, and the like, and that said restrictions have always been enforced by the courts of Missouri against all owners and tenants of property so restricted, without regard to race or color.

6. Defendants further state that said restrictive agreement is void because it violates rights conferred on these defendants by section 41 of title 8 of the United States code, which said section provides, in part, as follows:

[fol. 14] "Section 41. Equal rights under the law. All persons within the jurisdiction of the United States

shall have the same right in every state and territory to make and enforce contracts, . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Defendants further state that said restrictive contract is contrary to the provisions of said section 41, and deprives these defendants of the right to make and enforce contracts which the white citizens in Missouri enjoy, and to the protection of laws regarding the ownership and use of property which white citizens of this state have applied to similar transactions; that said restrictive contract, if enforced and upheld, will abridge the rights of the defendant Josephine Fitzgerald which are enjoyed by other white citizens of Missouri with regard to the making and enforcing of contracts and the full and equal benefit of all laws and proceedings for the security of property as is enjoyed in this state by other members of her race.

7. That said restrictive agreement is void because the same is contrary to the provisions of section 1 of the 14th amendment to the constitution of the United States, as declared by the federal court in *Gandolfa v. Hartman*, 49 Fed. 181, which said case has never been overruled; and is contrary to Section 10 of the bill of rights as contained in the constitution of Missouri, article 1, section 10.

7a. That said restrictive agreement is void for the reason that the description of the property mentioned therein [fol. 15] is defective and so indefinite that it does not enable the defendants and others, not parties to said agreement, to know what property is attempted to be restricted thereby, and fails to impart any notice to these defendants.

8. Defendants further state that the plaintiffs seek action by the state of ~~Missouri~~ in this cause by asking the courts of this state to enforce a contract which is contrary to the provisions of the statutes and constitutional provisions aforesaid; that, if this court upholds and enforces said restrictive agreement, its action will constitute state action, contrary to the provisions of section 1 of the 14th amendment to the constitution of the United States, which forbids

any state to enforce any law which shall abridge the privileges or immunities of citizens of the United States, and forbids any state to deprive any person of life, liberty, or property, without due process of law, or the denial to any person within the jurisdiction of a state the equal protection of the laws; that the court upholding an enforcement of said restrictive agreement by this will deprive these defendants of their said property without due process of law, and will deny to them the equal protection of the laws, within the meaning of said 14th amendment, and of said article 10 of the constitution of Missouri, by action of the state of Missouri.

9. Defendants further state that, according to the records of the recorder of deeds of the City of St. Louis, said restrictive agreement was entered into and placed of record on the 17th day of February, 1911; that, notwithstanding the existence of said agreement, members of the Negro race have owned and occupied as residences lots or parcels of property located in said city blocks covered by said agreement, including the property next door to that owned and occupied by the defendants J. D. and Ethel Lee Shelley, for a period of more than 15 years; that some of said homes so owned and occupied by members of the Negro race were [fol. 16] built by them for that purpose; that all of said occupancy by said members of the Negro race began long after said restrictions were placed on file, and that said ownership and occupancy by said Negroes have been open, notorious and known to the plaintiffs herein and to the other signers, their assigns and successors in ownership of property covered by said restrictions; that neither these plaintiffs, nor any of the other signers of said restrictive agreement, nor their assigns, personal representatives, or successors, have ever taken any steps to prevent said occupancy and ownership of property covered by said agreement and located in said city blocks, particularly in the city block where the property transferred by and to these defendants is located, although well knowing that said agreement was being violated by signers thereof, or their assigns and successors; that said conduct, and lack of action to prevent said occupancy by Negroes on the part of these plaintiffs and others privy to said restrictive agreement, constitutes a waiver of the same by reason whereof said agreement has now become without force and effect and

a court of equity is without authority to enforce the same on account of said waiver by these plaintiffs and others.

10. Defendants further state that these plaintiffs have been guilty of laches, in that they have stood by for a long period of time, either themselves or their predecessors in ownership of parcels of property which they now claim to own, and kept silent and refrained from asserting whatever rights, if any, they may have had under the terms of said restrictive agreement to prevent Negroes from owning and occupying property covered by said restrictive agreement, although knowing that said agreement was being violated continuously for many years, to-wit; fifteen years.

11. Defendants further state that said restrictive agreement pleaded in plaintiffs' petition is also void, because it violates the rule against perpetuities, in that it prohibits the unrestricted sale of property to a class of citizens of the [fol. 17] United States for a period of fifty years, and prohibits the transfer of the same to any member of the Negro or Mongolian race for said period of time, or occupancy by any member of said races during said period, all without providing any means of or for the unrestricted sale to or occupancy by any member of said races, save by the unanimous written and acknowledged consent of the signers or their assigns or successors. That said agreement is an unreasonable restriction against the right to alien real property, and works a hardship on the owners thereof and tends to keep the same out of commercial channels for a longer period of time than the law allows.

12. Defendants further state that by its decision in the case of *Gandolfo v. Hartman*, 49 Fed. 181, decided in 1892, the federal court declared that a provision in a deed which provided that the land conveyed therein should never be rented to a Chinaman, was void because it was contrary to the 14th amendment to the constitution of the United States, and further ruled:

"Any result inhibited by the constitution can no more be accomplished by contract of individual citizens than by legislation, and the courts should no more enforce the one than the other."

Defendants further state that said decision has never been specifically overruled; that said decision was rendered nearly a decade after the civil rights cases (100 U. S. 3), wherein it was established and held that the provisions of the 14th amendment to the constitution was protection against governmental action, and not against individuals in a private capacity; that the United States Supreme Court, in the case of *Buchanan v. Warley* (245 U. S. 60), decided in 1917, cited and applied sections 41 and 42 of title 8 of the United States code, hereinbefore set out, to state action by a legislative body thereof, to-wit, an ordinance passed by the council of the City of Louisville, Kentucky, and held said ordinance void because it prohibited Negroes [fol. 18] from living in property located in certain sections of said city; that since said decision the use of restrictive covenants in deeds and restrictive agreements, similar to the one pleaded by the plaintiffs herein, have been resorted to more frequently, and have now become the sole and oft-used method by which to accomplish that which the court said could not be done by legislation; that, by means of said method of restrictive covenants and agreements, ghettos have been created in nearly all of the cities in certain states of the union, particularly in the state of Missouri and the City of St. Louis, thereby restricting Negro citizens to a limited area for homes and housing purposes, with the results hereinafter set forth.

13. That the Negro population in St. Louis has grown from 40,000 in 1910 to more than 117,000 at the present time, and that of this increase more than 15,000 took place between the taking of the United States census in 1930 and 1940, and that this rate has been equalled or exceeded in the years since the 1940 census. That despite this large increase in the Negro population of the City of St. Louis, the area which Negroes may live in without occupying property which has been restricted against them by deed or by agreements similar to the one pleaded by the plaintiffs herein has been enlarged very little; that, by means of said restrictions, the portions of this City of St. Louis occupied by Negroes have been narrowed, surrounded and circumscribed almost completely, and that by increasing business areas and the condemnation of lands by the City of St. Louis for purposes of widening streets and beautifying the city and building public institutions, this restricted area or ghetto

has become much smaller, and Negro families are compelled to move in together, three or more of them in quarters ordinarily housing one family; that this congested condition has been aggravated by reason of the influx of war workers during the last 3 years; that, due to this overcrowding, disease, crime and juvenile delinquency, the death rate among Negroes, and fire hazards, have all greatly increased, [fol. 19] and the health and safety of other portions of said city have been endangered; that another result of the creation and limiting of Negroes to homes in said ghettos is to increase the rental which they pay far beyond that paid by the average city dweller for even better housing accommodations, and Negroes are compelled to pay much higher prices for the property they buy to live in than white citizens pay for the same or better housing property. That the aforesaid conditions in St. Louis are an integral part of the living conditions and hardships imposed on Negroes in many parts of the United States, particularly in the City of St. Louis and in the State of Missouri, and that said restrictive covenants and agreements are the means by which said conditions have been brought about and are being aggravated, contrary to the provisions of the statutes and constitution set out herein and pleaded, and that the courts should afford relief from said conditions under their powers in equity.

14. Defendants further state that no court of appellate jurisdiction in Missouri has ever passed upon, or had before it for consideration, sections 41 and 42 of title 8 of the United States code above set forth.

15. Defendants further state that, by reason of the occupancy of property as homes by Negroes in the said city blocks covered by said restrictions for a period of at least 15 years prior to the purchase of said property by the defendants, Shelley, it has now become impossible to enforce said restrictive agreement so as to effectuate its purpose, to-wit, to keep said blocks free from occupancy by Negroes, or their ownership, and to preserve them for dwelling places for white people or people of Caucasian blood; that, in addition to the foregoing occupancy, said blocks have now been surrounded almost completely by Negro home owners and tenants, so that the neighborhood has completely changed in the last few years; that to enforce said restrictive agreement would not in any way accomplish the purpose

of the plaintiffs herein, but would work a hardship on these [fol. 20] defendants and other Negroes seeking places in which to live, and would prohibit present owners who can find no other buyers for their said property than members of the Negro race from disposing of the same while they may take a profit, or receive a fair value for the same.

15. Defendants further state that it is the settled law of Missouri that contracts made in violation of a valid statute or law, or which required the violation of such laws in their fulfillment, are void, and will not be enforced by the courts of this state; and defendants hereby invoke the application of said doctrine and settled rule of law to the facts of this case. That it is also the well-settled rule of decision in this state that cases decided by the courts of Missouri, or by other tribunals, which did not have before them for consideration a statute or other law at the time of making a ruling or deciding a cause, are not precedents to be followed by the courts when passing upon said statutes in a case where they are properly pleaded and are at issue therein; and the defendants hereby invoke that rule of decision in this case.

16. Defendants further state that the plaintiffs do not come into court with clean hands.

17. Defendants deny each and every allegation in plaintiffs' petition not hereinbefore specifically admitted.

Wherefore, having made a complete and full return to the order to show cause issued herein, and having made answer to the plaintiffs, defendants pray that the court will declare said restrictive agreement to be null and void and contrary to law; that the court will declare the same to have been waived by the plaintiffs by reason of their said failure to act, and their said laches, over a period of many years; that plaintiffs be estopped to assert the existence and effect of said agreement by reason of their said failure to act; and that the petition of the plaintiffs may be dismissed and for naught held, and that defendants may go hence without day, and recover their costs.

[fol. 21] IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

MINUTE ENTRIES OF ARGUMENT

On October 18, 1945, this cause coming on for *hearing* on the *order to show cause* why a temporary injunction should not be granted, come the parties hereto by their respective attorneys; thereupon the hearing on the order to show cause progressed before the Court upon the order to show cause, upon the defendants' return to the order to show cause and upon the evidence and proof adduced, and said hearing not being terminated, it is ordered by the Court that the further hearing of the order to show cause be laid over until tomorrow, Friday, October 19th, 1945, at 10 o'clock a.m.

It is further ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

On October 19th, 1945, the order to show cause herein coming on for *further hearing*, come again the parties hereto, by their respective attorneys; thereupon the further hearing on the order to show cause resumed and progressed before the Court and not being terminated, it is ordered by the Court that the further hearing be laid over until Monday, October 22nd, 1945, at 10 o'clock a.m.

It is further ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

On Friday, October 19, 1945, it is ordered by the Court that the hearing on this cause on its merits be set for Thursday, November 1st, 1945, at 10 o'clock a.m.

On Monday, October 22, 1945, the order to show cause coming on for further hearing, come again the parties hereto, by their respective attorneys, thereupon the further *hearing* on the order to show cause resumed and progressed before the Court and being *terminated*, the same is submitted to the Court and the Court having heard and duly considered the same, but not now being sufficiently advised of and concerning the premises, takes time to consider thereof.

[fol. 22] It is ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STIPULATION AS TO EXHIBITS ACCOMPANYING, AND TESTIMONY  
IN, THE TRANSCRIPT OF RECORD

Counsel for the parties plaintiffs and defendants agree that

(1) Plaintiffs' exhibit A, the covenant at issue which was admitted in evidence over defendants' objection that it contravened section 41, title 8, United States code, is the only exhibit necessary to accompany this record, all other exhibits being sufficiently covered by stipulation of facts at pp. 1-4 hereof; therefore they stipulate it shall be the only exhibit set forth herein.

(2) The testimony of the following 10 witnesses is not essential to a determination of the issues on appeal; therefore they stipulate such testimony shall not be transcribed:

Bowers, Eli	(show cause)
Burdzy, M. A.	(show cause)
Bush, James T.	(show cause; Merits)
Fitzgerald, Josephine	(show cause)
Hackmann, Lucille	(show cause)
McCullough, Charles P.	(show cause)
Neumann, Charles P.	(show cause)
Paulos, Oscar	(show cause)
Seegers, G. L.	(show cause; merits)
Weathers, Frank A.	(merits)

3. The Court nisi prius having considered the evidence offered at the hearing on the order to show cause together with the evidence at the hearing on the merits, they stipulate that the evidence at both hearings, subject to paragraph (2) [fol. 23] next preceding, is before the appellate court.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

Statement of Evidence

On October 18, 1945, before the Honorable Wm. K. Koerner presiding as judge in division 3 of the aforesaid Circuit Court, in equity sitting, the following proceedings were had

on the order to show cause why temporary injunction should not issue.

#### APPEARANCES

For Plaintiffs .....	Gerald L. Seegers, Esq.
For Defendants .....	George L. Vaughn, Esq.

#### PLAINTIFFS' EVIDENCE

##### OFFER IN EVIDENCE

Mr. Seegers: I would like to offer in evidence recorder of deeds' book number 2400, and more particularly page 488, on which appears the recorded covenant or restriction agreement referred to in this case; and because there is no original of this in existence that we know of, I would like to read this into the record so we can, for once and all—

The Court: Have you a copy of it?

Mr. Seegers: Yes, your Honor.

The Court: All right. Read it into the record, and let me have the copy.

(Counsel agree that the wording only of the restriction agreement, omitting signatures, notary's acknowledgment and recorder of deeds' entry, shall be set forth in this transcript of the record. It follows.)

"This contract of restrictions made and entered into by the undersigned, the owners of the property fronting on Labadie Avenue in Blocks 3710-B and 3711-B between Cora Avenue on the West and Taylor Avenue on the East, Witnesseth: That for and in consideration of one dollar and [fol. 24] other valuable considerations paid by the undersigned, one to the other, the receipt of which is hereby acknowledged, each and every one of the undersigned persons hereby contract and agree with the other and for the benefit of all to place, and do place and make upon the Real Estate fronting on Labadie Avenue and running back to the alley on the North and South sides of Labadie Avenue, between Taylor Avenue and Cora Avenue, a restriction, which is to run with the title of said property in favor of each and every one of the undersigned parties, and their assigns and legal representatives and successors as the owners of this property, which shall not be removed except by the consent of all of the property owners by some instrument or Deed, made and Executed and put of record,

the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition all the time and whether recited and referred to as not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race. It is further contracted and agreed that upon a violation of this restriction either one or all of the parties to this agreement shall be permitted and authorized to bring suit or suits at law or in equity to enforce this restriction as to the use and occupancy of said property in any Court or Courts and to forfeit the title to any lot or portion of lot that may be used in violation of this Restriction for the benefit of each and every person that may now or hereafter, after the recording of this restriction, become the owner of any property on said street. To have and to hold each to the [fol. 25] other their said property, subject, however, always and under all conditions to the terms of this restriction, each warranting to the other the compliance in every respect of the above restrictions. In Testimony whereof, the parties hereto have signed their name and seal this the 16th day of February, 1911."

[fol. 26] MATILDA SOHLMANN, sworn, on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. Mathilda Sohlmann.

Q. Mrs. Sohlmann, did you, prior to May, 1945, own the property located at 4600 Labadie?

A. Yes.

Q. Did you sell the property at that time?

A. I sold that the 30th of May.

Q. This year?

A. Yes.

Q. To whom did you sell it?

A. To Burns; Mr. Sleeter sold it for me. Mr. Sleeter was my agent; he sold it.

(Objection; the record is the best evidence.)

The Court: She can testify as to her own property, whether she owned a piece of property or not. When she says she sold, it doesn't mean she conveyed it. Passing of title must be proved by the record.

Mr. Vaughn: Does your Honor rule her testimony that she sold it is the best evidence?

The Court: I rule it is competent evidence as to her own ownership of her own property.

Mr. Vaughn: That is our objection.

The Court: Very well; overruled. This is the property at 4600 Labadie?

Mr. Seegers: That is the defendants' property; the now defendants' now property, the subject of plaintiffs' equitable action.

The Court: All right. This lady owned it prior to what date?

Mr. Seegers: Prior to May 18, 1945.

The Court: Very well.

Q. And you say you sold it through the Slattery Real Estate Company?

A. Yes, sir.

Mr. Vaughn: Move to strike that, your Honor, as not being the best evidence.

[fol. 27] The Court: Well, sold it; she don't say who she sold it to. You will have to show the transfer, if there is one.

Mr. Seegers: Well, it has no purpose to show the transfer, to whom; I am not interested in that.

The Court: Very well; proceed, if it is preliminary to something else. Overruled.

Mr. Vaughn: I didn't understand your Honor's ruling.

The Court: I say the objection will be overruled since, as I understand it, this is not an attempt to show a transfer of title; merely to show this lady moved out of the premises at that time.

Mr. Seegers: And divested herself of her interest.

The Court: Oh no, no.

Mr. Seegers: Well, she doesn't own it any more.

The Court: Objection will be sustained if that is your purpose.

Mr. Seegers: All right.

Mr. Vaughn: Move to strike it from the record.

The Court: Sustained.

Q. At the time you owned the property, Mrs. Sohlmann, did you know there was a restriction agreement?

A. Oh yes; I knew.

Mr. Vaughn: Just a moment.

A. I was—

Mr. Vaughn: Just a moment, please. Same objection, whether she knew or not.

The Court: Overruled.

Q. You knew there was a restriction agreement covering your property?

A. Yes, sir; I know, at the time I attended meetings, and I had chances to sell it to colored people but I refused.

Mr. Vaughn: Move to strike it out as not responsive.

The Court: Very well; sustained. The only point that is material is, did she know of the restrictions.

Mr. Seegers: That's all.

[fol. 28] Cross-examination.

By Mr. Vaughn:

Q. When did you cease to live at 4600 Labadie?

A. I never lived in; that was always I had tenants, my own tenants, Mrs. Edring; they lived upstairs, her husband and she.

Q. You never lived out there?

A. No; I never lived in it, No.

Q. Did you ever have any property in that block?

A. No, I never had no troubles.

Q. I say, property: did you have any property in that block?

A. No, not in that block; that was 4600 even, the only.

Q. Were you acquainted with any of the tenants who owned the, occupied the property on either side of this 4600?

A. No; they come on my—

Mr. Seegers: I object to that as immaterial.

A. —door, but I refused to do it all the time.

The Court: The objection will be overruled.

Q. Yes; the question I asked you, madam, was if you knew any of the other tenants who lived in property adjoining you, or close to yours, or either side of you.

The Court: Did you know any people lived along the street there?

A. I just know my tenants and what's to us, the second neighbor.

The Court: Just your tenants and the next neighbor to them?

A. They are all colored people, but I never know the name of them, I think Yeager is the name.

Questions by the Court:

Q. Where did they live?

A. Next to mine.

Q. On Labadie avenue?

A. Yes, sir.

Q. Next to your property?

A. Yes, sir.

Q. Your property was 4600 Labadie?

A. Yes, sir.

Q. How long did the Yaegers live there?

A. All the time since I bought it, and I am 1927.

Q. The Yaegers were colored people?

A. Colored people.

[fol. 29] Q. And they lived there since 1927?

A. Yes, sir.

Q. Any other colored people live along that block, do you know?

A. There was living one house in between, but I never knowed them because I ain't lived there. I just had tenants, and one of the tenants, is her husband, too.

Q. You mean the Yaegers, and there was another colored family lived in the same block?

A. Oh yes; but they moved out lately now.

Q. How long were they there?

A. That's quite a while; Mrs. Edering, maybe she knows them better because 7 years she is my tenants, and she is present here.

The Court: That's all I care to ask.

Mr. Vaughn resumes.

Q. Madam, did you know a colored woman living in the block named Sarah Young, who worked for the juvenile Court?

A. Why, that's my neighbor, I guess, see, I mentioned the next door neighbor.

The Court: I thought she said Yeager; or did I misunderstand her?

A. Yaeger.

Q. I am asking you now about Mrs. Sarah Young, and colored people.

A. Young; oh, I guess Young, not Yaeger; Young.

Q. She lived there; and you knew she lived there?

A. Yes, I know she lived there.

Q. And about how long did you know she lived there near your property?

A. Well, I guess she moved in next year when I bought, I guess.

Q. I will ask you, madam, if you ever brought any suit to oust her or any other colored people who lived in that block.

A. No, what I never done; I always had trouble not to rent.

The Court: Are the Yeagers still living there?

A. Not Yaeger; I think Youngs.

The Court: Young; are they still living there?

A. Yes.

[fol. 30] Mr. Vaughn: That's all.

WILLIAM WNUKOWSKI sworn on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. William Wnukowski.

Q. And where do you live, sir?

A. 4603 Labadie avenue.

Q. With respect to 4600 Labadie avenue, sir, where is your home located?

A. Direct across the street.

Q. Do you own the property in which you live?

A. Yes, sir.

Q. How long have you owned it?

A. 21 years the past August.

Q. Have you lived there in that house all of that time?

A. Yes, sir.

Q. Are you familiar with the other residences in that block?

A. Yes, sir.

Q. And the happenings that have taken place in that block during the period you have lived there?

A. Yes, sir.

Q. To your knowledge, how many negro families now reside in that block?

A. Right now there's three that I know of.

Q. Does that include or exclude the Shelleys, the defendants in this case who moved into 4600 Labadie?

A. Well, no; that doesn't include them.

Q. There are 3 other Negro families in addition to the Shelleys?

A. Yes, sir.

Q. Have any of those families to whom you have referred moved in there within the last 21 years?

A. No, sir.

Q. There have been no Negro families moved into that block within 21 years?

A. No, sir.

Mr. Seeger's: That's all.

[fol. 31] Cross-examination.

By Mr. Vaughn.

Q. Just a moment. Are you acquainted with the property at 4608 Labadie?

A. 4608.

Q. Yes, sir?

A. No, I am not acquainted with that. That's across the street, on the even side.

Q. Across the street from you; that's across the street from you, isn't it?

A. Yes, sir.

Q. And on the even side?

A. What's that?

Q. On the even numbered side; the houses on that side are even numbered?

A. Yes, sir.

Q. Now, if you were to draw a line directly from your door on the north side of this street,—that's where you live, isn't it?

A. Yes, sir.

Q. If you were to draw a line from your door straight across to the south side of the street, what property number would you strike on the south side?

A. Right from the numbers, they divide right there, from 4500 to 4600, and they jump.

Q. Well, can you tell me what 'phone (house) number you would strike on the south side?

A. I couldn't even tell you that.

Q. Well, who lives directly in front of you?

A. Direct in front, in me?

Q. Yes, sir.

A. I don't know the people.

Q. Are they colored or white?

A. They are colored live at 4600.

Q. That's what I say; right across the street.

A. They weren't in there before, but they just moved in there recently.

The Court: You are talking about 4600 now. He is talking about your client's number now.

Q. Well, do you know where 4608 is?

A. That's across the street, too.

Q. That's across the street, and it's kind of diagonally across the street from you, isn't it?

A. Yes.

Q. Do you know the people who live there?

[fol. 32] A. No, I don't know the people around the neighborhood at all. Very few people I know.

Q. You know those are colored people, don't you?

A. There are 3 families colored people live there.

Q. And these people moved there a few years ago?

A. I been going out and coming back from town, but I never did see them in there.

Q. The people who live at 4610, that's also diagonally across the street from you, isn't it?

A. Tell the truth, I don't know the neighbors there either. I know the colored people through the neighborhood there; when it comes to numbers I don't pay attention, but I know the three colored families across the street.

Q. For how many years have you been seeing colored people live in the block across from there?

A. When we bought that property there it was supposed to be restricted; we never knew there was colored people living in that block.

Mr. Vaughn: Move to strike, your Honor.

The Court: Sustained.

Q. For how many years have you seen colored people across the street from there?

A. As long as we lived there.

Q. How many families?

A. 3.

Q. How many moved out?

A. I seen one.

Q. Seen 3 colored people move in that place?

A. No; white people moved in there.

Q. I will ask you if it isn't a fact that colored people built a house in that block.

A. No; I don't know, that must have been before my time.

Q. Now, within the last 10 years don't you know, Mr. Witness, about 10 years ago a colored woman built a house there and that has been occupied by two or three people, and a man named Amos Higgins now lived there?

A. I don't know that.

Q. You wouldn't say it wasn't true, would you?

A. I can't say it was true; I don't know who built it.

[fol. 33] Q. And colored people live there?

A. Colored people lives there; I don't now who built it.

Q. Let me ask you if you ever brought a suit to restrain colored people that used them, to prevent them from living in your block.

Mr. Seegers: I object to that; there is no showing any of the houses to which counsel generally refers are numbers or properties signed up in this restrictive covenant. Until there is such a showing, evidence whether anybody, or not, brought a suit to remove colored people from houses on that block is not material.

The Court: Objection will be overruled.

Questions by the Court.

Q. How about this 4600; how long have colored people lived at 4600?

A. Well, I really don't know because, the way I understand, they moved in from the rear.

Q. Well, have any white people lived at 4600 within your recollection?

A. Yes, sir.

Q. How long ago, to the best of your recollection?

A. About 2 weeks ago.

Q. White people lived there until 2 weeks ago?

A. Yes, sir.

Q. At 4600?

A. Yes, sir.

The Court: All right; you proceed, now.

Mr. Vaughn Resumes Cross-examination.

Q. The block you live in you say is restricted?

A. Yes, sir.

Q. That is on the north side of the street?

A. Yes, sir.

Q. And you live between Taylor avenue on the east and Cora avenue on the west?

A. Yes, sir.

Q. And this block where these houses are, 4600 Labadie and 4608 and 4610, those houses are on the south side of the south side of the street, aren't they?

A. I don't hear you; I am hard of hearing.

[fol. 34] Q. Well, I say 4600, 4608, 4610 and these other houses where colored people live that you have seen living there ever since you have been there, or for some time, are on the south side of the street, aren't they?

A. Yes, sir.

Q. And they live between Taylor avenue on the east and Cora avenue on the west?

A. Yes, sir.

Q. I ask you again as I don't recall that you answered, if you yourself, by yourself or in company with anyone else, have ever brought a suit or action of any kind to prevent colored people from moving into or living in the property there on your side of the street, or on the south side of the street between Taylor avenue and Evans avenue.

Mr. Seegers: I object to that for the reason previously stated: that unless there is showing in evidence that property not specifically mentioned or described by counsel in his question is shown to be included in the covenant, it is inadmissible; secondly, that the witness has already testified to his knowledge there have been no colored families moved into the block, and that during his entire period of ownership of property in that block no colored families have moved in with the exception of 2 weeks ago.

The Court: The objection will be overruled. There's very little evidence that's incompetent in cases of this kind, because the matter is in the discretion of the Court. Overruled.

Mr. Vaugh: Your Honor, it is competent for this purpose; it is competent hereto show, if we may show by this witness, that there are lots in those blocks on either side of the street that are not restricted, where they may be sold to and occupied by colored people; then that goes to render—

The Court: His testimony, of course, doesn't show that. It merely shows they didn't file suit.

Mr. Vaughn: That's what I asked him.

The Court: That doesn't tend to prove the lots were restricted or were not restricted. The objection will be overruled.

Q. Will you please answer that question?

[fol. 35] The Court: He asked whether you ever filed a suit, you yourself or in connection with anybody else ever filed a suit to put any colored people out.

A. No, sir.

The Court: Or prevent any colored people from coming in.

A. No, sir.

Q. What time in the morning do you go to work?

A. I go to work at about 10 minutes after 6, or a quarter after 6.

Q. And what time do you get home?

A. I get home some time after 6:30 or so, a quarter to 7.

Q. Now, summer time when you came home, during this last summer and summer before last it was still light a good, long time, wasn't it?

A. Yes, sir.

Q. Didn't you ever see, during last summer and summer before last, colored people living at 4608 Labadie avenue, across the street from you?

A. Well, the people there and children running up and down the sidewalk, I didn't know exactly where they lived.

Q. There were colored children—

A. Yes.

Q. —running up and down the sidewalk?

A. Yes. I didn't know exactly what family they were.

Mr. Vaughn: That's all.

### Redirect examination.

By Mr. Seegers:

Q. Mr. Witness, this Labadie avenue between Taylor and Cora, is that a continuous block or is there a corner between in there?

A. No; it's a continuous block.

Q. It's a continuous block; there's no corner between Cora and Taylor—

A. No, sir.

Q. —on either side of Labadie?

A. No, sir.

Q. This 4600 Labadie isn't a corner lot?

A. No, sir.

Mr. Seegers: That's all.

[fol. 36] EMIL KOOB, on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. Emil Koob.

Q. And where do you live?

A. 4935 Cote Brillante.

Q. In what business or profession are you engaged?

A. Retail baking.

Q. And where is that located?

A. North St. Louis; 2823 Marcus.

Q. How long has your bakery been located at that address?

A. The building has been located there since 1902.

Q. And how long has the bakery business been conducted there under the name Koob Bakery?

A. Since the turn of the century.

Q. Will you give the date, please?

A. 1900.

Q. And how long have you lived at your present address?

A. My present address, I have lived there for 8 years.

Q. With respect to the location of your bakery, what distance are you from 4600 Labadie?

A. 4600 Labadie; Marcus avenue is the 4700 intersection, and the bakery is a lot removed from St. Louis avenue, which is a block from Labadie; would make it approximately a block and a half.

Q. The bakery is in the middle of the block?

A. The bakery is just one lot removed from the corner of St. Louis avenue.

Q. So you are one block and one lot removed from Labadie avenue, and one block west of 4600?

A. That's right.

Q. Are you connected with any improvement association in that neighborhood, Mr. Koop?

A. Yes, I am.

Q. What's the name of it?

A. The Marcus Improvement Association.

Q. The Marcus Avenue Improvement Association?

A. The Marcus Avenue Improvement Association.

A. What position, if any, do you hold in that organization?

A. At the moment I happen to be the chairman; president of the board.

Q. How long have you been president?

A. 2 years; 2 years and a half.

Q. How long have you been connected with the organization [fol. 37] as a member?

A. I have been connected with the organization for some 20 odd years.

Q. During the periods during which you have been a member of that organization have you interested yourself in the immediate neighborhood?

A. Yes; very much so.

Mr. Vaughn: What immediate neighborhood?

The Court: Be more definite about it.

Q. What are the bounds of the district covered by this Marcus Avenue Improvement Association; can you recite them?

A. Yes. The northern boundary is Natural Bridge, and has an expanse—

Q. What hundred north is that, do you know?

A. Natural Bridge, I think it's 3400; I am not—

Q. What are the other boundaries?

A. It may be 35. And the other boundaries, the northern boundary is Natural Bridge road, and the expanse on that particular street is Newstead to Kingshighway; that's the picture, probably better portray that by giving the picture that way. And then we go south on Kingshighway to Maffitt place.

Q. How far south is that in numbers, do you know?

A. Maffitt avenue is 2800 north; and then we go east on Maffitt avenue to Taylor avenue.

Q. What hundred east is that?

A. That's 2500 east.

Q. That's 4500 west; and—

A. And then we turn to the north on Newstead, and direct our course on Newstead and take Newstead on over to Natural Bridge on the west side, and take in that entire territory.

Q. Now, during the 25 years you have been a member of the Marcus Avenue Association have you been interested in that territory?

A. Oh, yes.

Mr. Vaughn: If the Court please, I don't see the purpose or the relevancy of this testimony. This is far removed from the property in question.

The Court: We will have to see what the relevancy is.

Mr. Seegers: This is preliminary.

The Court: Merely preliminary.

[fol. 38] What was your answer to that question, Mr. Koob?

The Court: He said yes.

A. Yes.

Q. Have you made it your point, or your avocation to watch the development of property within that district?

Mr. Vaughn: Just a minute.

A. Yes.

Mr. Vaughn: Object to that as leading, your Honor.

The Court: Overruled.

Q. Your answer is what?

A. I have made an intense study over a period of years.

Q. Has that study included the immediate neighborhood in which Labadie avenue is located?

A. Yes; very definitely.

The Court: Is this in the district here?

A. Yes, your Honor.

Q. Have you familiarized yourself in that 25 years with the property in the 4500 and 4600 block of Labadie avenue?

A. Yes.

Q. Have you paid any attention to the state of the property in this territory, and particularly the 46- and 4500 blocks of Labadie, as to whether or not the property there is occupied by negroes or white people?

A. Yes; I have been.

Q. Mr. Koob, are there any negroes living in the 4500 block of Labadie avenue, in the block numbered 4500?

A. I believe there's one.

Q. There's one?

A. I believe so.

Q. How long has that person, that negro person or family lived in that block?

A. To the best of my knowledge, some 23 years.

Q. Are there any negro families residing at the present time in the 4600 numbered portion of Labadie avenue?

A. Yes.

Q. How many?

A. In the 4600, including the new occupants?

Q. The defendants Shelley?

A. Yes.

[fol. 39] Q. Yes; include them.

Mr. Vaughn: Let's exclude them.

A. There are 2 or 3 families; besides Shelleys, I think there are two.

Q. Do you know the numbers of the houses in which those 2 colored families reside?

A. Yes; well, 4608, and I think it's 4610.

Q. How long—

Mr. Vaughn: Just a minute.

The Court: Have you completed your answer, sir?

A. I can't give you the accurate house numbers here; I know that the 4608 property—if the Court please, can I elaborate on that?

The Court: Certainly.

Q. I am familiar with the 4608 property, together with the 4610, and likewise 4606 which has been occupied by negroes over a great over a period of years as long as I can remember.

Q. These 3 houses?

A. That's right.

The Court: 3 families besides the defendants?

A. Well, recently there was a foreclosure in the 4606 piece.

The Court: Never mind that.

A. That is occupied by whites; it is not occupied by negroes.

The Court: Which one?

A. 4608.

Q. By whom is it occupied now?

A. It is occupied by whites.

Q. Now?

A. Yes.

Q. So, excluding the Shelleys, there are 2 negro families living—

A. 3. I am not sure about that, see?

Q. Wait 'til I finish. How many negro families are now residing, excluding the Shelleys, in the 4600 numbers of Labadie avenue?

A. Excluding them?

Q. Excluding the Shelleys.

A. 2.

Q. With the Shelleys, how many now reside in the 4600 properties of Labadie avenue?

A. 3 with the Shelleys.

Q. Can you tell the addresses of the other 2, excluding the [fol. 40] Shelleys, on Labadie avenue in which now negroes now reside?

A. For me to be specific, or rather accurate in saying 4608 or -10, I could stand to be corrected on those addresses. In 4608, the property there was originally in the hands of people by the name of Boxley; I knew the children—

The Court: Just answer the question, if you are certain about the addresses, just say so; if not, say that.

Q. Yes; with respect to people, now, and starting from the house number 4600 Labadie, how many houses intervene, if any, between 4600 Labadie and the first house there occupied by Negroes?

A. 2 or 3.

Q. Now, let's get this straight. 4600 Labadie is the house in which the Shelleys reside?

A. That's right.

Q. You say that, you previously testified that 4604 was formerly occupied by Negroes, but is now occupied by whites?

A. 4606.

Q. 4606. How many houses interpose, if you know, between 4600 and 4606?

A. Well, taking them from the amount, property addresses, 4600, 4602, 4604; I am assuming—

Q. You don't know?

A. That's right.

Q. Do you know how many houses removed from 4600 is the first house occupied by a Negro family?

The Court: He just said he didn't know.

A. Three houses.

Q. Three houses; you know that for a fact, Mr. Koob.

The Court: Do you assume that or do you know it, sir?

A. I know it.

Q. Do you know when, Mr. Koob, the two properties which you have referred to as 4608 and 4610 Labadie, when they first became occupied by Negroes?

A. 4608?

Q. And -10.

A. Well, I got this by the—

The Court: Just answer, won't you, please sir; the best you can.

A. The 4608 property was occupied by Negroes—

Mr. Vaughn: Just a minute.

[fol. 41] A. —since 18—

Mr. Vaughn: Just a minute. I want to make an objection. I object as not responsive.

Q. I asked you, Mr. Koob, if you knew at what time Negro families first occupied the properties now known as 4608 and 4610.

The Court: Do you know that's the question?

A. Yes.

Q. With respect to 4608, when was it first occupied by Negroes?

A. 4608 was first occupied by Negroes in 1882.

Q. Now, with respect to 4610, do you know?

A. I do not.

Q. How long can you remember back with respect to Negro occupancy of 4610?

A. As long as I can remember.

Q. How long in years?

A. 30 years.

Q. 30 years. Were there Negroes living in that particular spot 30 years ago?

A. The best of my knowledge.

Q. Do you remember it that way?

A. Now—

The Court: Just answer: is that the best of your recollection?

A. That's right. I would like to enlarge upon this.

The Court: Well, we don't want to get too much talk in the answer. When he asks you certain questions try to answer them, if you can.

Q. With respect to 4608 Labadie, do you know from your research and study how that come into the hands of Negroes in 1882?

Mr. Vaughn: If the Court please, I don't think that's competent. It calls for a conclusion on his research and study.

The Court: Well, find out the basis for his answer after he gives it.

Mr. Seegers: I thought I showed he was an expert with respect to occupancy by white or coloreds in this district.

The Court: Overruled. You may state how, if you know of your own knowledge.

A. This particular piece of property was run down—  
[fol. 42] Mr. Vaughn: If the Court please, may he answer  
yes or no? He hasn't answered the question.

A. I say yes.

The Court: All right. Testify, now, only from your own  
knowledge, now.

A. Not from hearsay. That's difficult; I have some re-  
search back in—

Q. Never mind about that.

A. —1923; and by virtue of the records we establish the  
fact that the Claggett—

Mr. Vaughn: I object to that; not competent, not respon-  
sive.

The Court: Did you examine the records yourself?

A. Yes, sir; I myself examined the records.

Mr. Vaughn: Make the further objection the record is  
the best evidence, your Honor.

The Court: Well, he just states how he arrived at his  
conclusion.

Mr. Vaughn: And that it is a conclusion of the wit-  
ness.

The Court: And that is the way he arrived at it, stating  
the basis for it. Overruled.

A. On October 18, 1882,—

Mr. Vaughn: I object to the reference to a memorandum  
unless we know how it was made.

The Court: Where did you make that?

A. Out of an office of the recorder of deeds.

The Court: You made it yourself?

A. Yes.

The Court: Overruled.

A. That Mrs. Grace Boxley, who was a negress, on Oc-  
tober the 10th, 1882, became the recipient of a parcel of  
property or a lot.

The Court: How did you know she was a colored per-  
son?

A. Because I knew her descendants.

Mr. Vaughn: If the Court please, I submit that's not sufficient knowledge because, of the thirteen million negroes in America, twelve million of them have had one white parent.

[fol. 43] Mr. Seegers: Oh, now,—

Mr. Vaughn: That is a scientific fact; I can establish it among the authorities as stated in the Reader's Digest awhile ago.

The Court: I have no doubt that's approximately true.

Mr. Vaughn: So that the descendants of a person doesn't tell to what race he belongs. For that reason I say it is incompetent.

The Court: Objection overruled. It may not be conclusive.

A: I knew the Washington Boxley and also Alice Boxley, I knew them, I knew them from childhood. That's how I establish the fact Boxleys are Negroes.

The Court: You still haven't answered how they came into possession of this property.

A. They came into possession of this property by virtue of a grant.

The Court: A deed to them?

A. That's right; by William H. Claggett.

The Court: Is he the man that laid out this subdivision?

A. That's right.

The Court: All right.

Q. Now, Mr. Koob, do you know from your own knowledge and examination of records whether that grant you just referred to from Claggett to Boxleys covered one or more lots in this particular block?

The Court: Well of course the record would have to be the best evidence of that.

A. Well, I don't know; I don't know.

Q. Do you have any knowledge of your own with respect to 4610 Labadie avenue, as to how it became the property of Negroes?

A. That was a transfer of later date. That was a much later date than that.

Q. Approximately when?

A. Well, the next parcel of property was 1904. That was the 4606 piece. That was owned at the time (examining a paper) by Frank McElroy in 1904. Well, he was a colored person.

Q. And 4610?

A. That transfer I can't give you the specific date of.

Q. Well, now how long have you know Negroes to live at 4610 Labadie?

The Court: He stated that.

[fol. 44] A. I stated before, to the best of my recollection 30 years. That may vary.

Q. Now, Mr. Koob, from your own personal knowledge have any Negroes or Negro families moved into any other residences in the 4600 numbered block of Labadie within the period of your memory?

A. No.

Q. Within the last 30 years you know of none?

A. No.

Mr. Seegers: That's all.

A. That may vary in years; I don't want to be pinned down to any specific year.

Q. Within the period of your memory of 4500 and 4600 blocks of Labadie avenue, has that neighborhood changed with respect to occupancy by Negroes or whites, within the last 25 or 30 years?

A. No; the character of the neighborhood definitely—

Q. With respect to Negroes' occupancy, it increased or decreased, or what?

A. No decrease; I would say it increased.

Q. Are you familiar from own experience and knowledge, Mr. Koob, with what happens to property values in a neighborhood populated by whites, and Negroes move into it?

Mr. Vaughn; Just a minute. If the Court please, I don't think that's a proper question. This witness isn't qualified as an expert.

The Court: Sustained. The witness testifies as to values of real estate.

Q. Now, Mr. Koob, with respect to the nearest point to 4600 Labadie that is populated either predominantly or

exclusively by Negroes, what distance exists between such a point in any direction and 4600 Labadie.

A. 4600 Labadie; two blocks.

Q. Two blocks; and you would say—

A. At least two blocks.

Q. Two blocks from 4600 Labadie is a street predominantly or totally occupied by Negroes?

A. Yes, sir.

The Court: What direction?

A. East. From Newstead east.

[fol. 45] Q. Now, Mr. Koob, with respect to that condition two blocks east of 4600 Labadie, how long in point of time has that particular point been predominantly occupied by Negroes?

A. 10 years at least.

Q. 10 years at least?

A. At least.

Mr. Seegers: That's all.

#### Cross-examination.

By Mr. Vaughn:

Q. Mr. Koob, where were you born?

A. In St. Louis. You mean the specific address?

The Court: No; that's enough. St. Louis is sufficient.

Q. When were you born, to know your family history?

A. I was born in 1904.

Q. So that all of these questions, 25, 30 and 40 years, 1882 that you testified to, that's not of your own knowledge; that's all your research, is that right?

Mr. Seegers: Now, if the Court please; I object to that for the reason it is a triple question, refers to 3 or 4 distinct instances. Counsel should split them up.

The Court: Ask him about one locality at a time.

Q. Now, you say 4608 from 1882. That's, of course, way before you were born.

A. That's right.

Q. About 12 years before you were born. What you testified to—is 22 years before you were born. What you

testified to in reference to that is a result of your looking up records or things of that sort?

A. Yes.

Q. When did you first go to live in the neighborhood where you say where you now live?

A. 1904.

Q. And you have lived where since 1904?

A. In the general district that I outlined there.

Q. How far have you lived, do you now live from the 4600 block on Labadie avenue?

A. My home is a possible half mile, three quarters of a mile.

[fol. 46] Q. And has always been?

A. No, of recent date; and specifically I am living in this residence since 1937.

Q. Which is where?

A. 4935 Cote Brillante; east of Kingshighway on Cote Brillante.

Q. 4935 Cote Brillante. Now, where did you live prior to that time?

A. 2823 Marcus avenue.

Q. And how long have you been connected with this organization, this improvement association?

A. Oh, I have been associated there for some 20 odd years.

Q. 20 odd years; and you have held an official position how long?

A. Oh, official positions all through those years, a matter of being a director. Of recent date I happen to be president of the organization.

Q. Now, as I understand your testimony, you say that the nearest Negroes who live, other than the few you talked about, to 4600 Labadie are 2 blocks away?

A. Yes.

Q. Is that east or west?

A. That's east of 4600.

Q. You know where Maffitt is, don't you?

A. Two blocks away from Labadie.

Q. Two blocks north of Labadie?

A. Two blocks south of Labadie.

Q. South of Labadie?

A. Yes.

Q. Isn't it a fact, Mr. Koob, that negroes live on Labadie avenue in the 45- and 4600 block,—Maffitt?

A. Maffitt; yes.

Q. Also live on St. Louis avenue in those blocks?

A. In the 45- and 46, they live there now?

Q. Do you know that to be a fact, I asked you.

A. No, it isn't.

Q. Did you ever know a man named Alexander in the 4600 block who worked for the government?

A. I knew a man named Douglas, two families on St. Louis avenue between Cora and Marcus, that lived there for many years. I knew the families, both of them.

[fol. 47] Q. Yes. A large number of Negroes live on Cora avenue, do they not?

A. South of Kennerly, yes.

Q. Well, they live north of Kennerly?

A. No. No.

Mr. Seegers: If the Court please, if he will tell us these distances; I am not that familiar.

The Court: Try to be more definite. Where is Kennerly with reference to Labadie?

A. 3 blocks removed.

The Court: South, or north?

A. South.

The Court: It runs parallel with Labadie?

A. It runs parallel to them: Labadie, St. Louis, Maffitt and Kennerly.

Q. And Cora?

A. Cora is the street that divides between Taylor and Marcus?

The Court: It runs north and south?

A. South.

The Court: His question is whether colored people live on Cora between Labadie and Kennerly.

A. There are none.

Q. They live on the block south, between Labadie and the street south of it?

A. They live between Labadie and St. Louis, no, they don't live between, there's no frontage on Cora property.

Q. Are you acquainted with the property at 4614 Labadie avenue?

A. 4614?

Q. Yes, sir.

A. I can't picture the property, no, unless that's the 4610 I have reference to.

Q. Don't you know about 9 years ago a colored woman named Ruth Ward Williams built a house at 4614 Labadie avenue? Dorothy Word built a house at 4614, now Dorothy Hicks, built a house at 4614 Labadie avenue?

A. Dorothy Ward. She built the house; can I give you the history of that.

Q. I asked you if you know that fact.

A. Yes; she built the house after two—

[fol. 48] The Court: Never mind about that; just answer the questions.

A. Two form questions.

The Court: Just a minute. Did you hear me? Answer the question.

A. Yes.

The Court: Don't volunteer anything.

Q. I will ask you if, since that house was built by Miss Ward, Negroes haven't occupied it.

A. Yes, sir.

Q. Do you know who now lives there?

A. As far as I know, Miss Ward, Dorothy Ward.

The Court: Is she a colored person?

A. Yes.

The Court: That's 4614?

A. That's 4608, to my knowledge.

The Court: The question was about 4614.

A. Well, there are no Negroes living at 4614.

Q. Don't you know that the Wards now live and have lived, ever since that house was built, at 4614 Labadie avenue? Did you learn that fact?

A. (Examining a paper) I am not familiar with the addresses; let's strike—I know Dorothy Ward lives there—

The Court: 4614 would be west of 4610?

A. Yes.

The Court: 4608 is east. Do you know of any colored families live west?

A. At—4614, that house may be—no, I don't.

Q. Did you ever know a colored schoolteacher at the time who lived in that block, named Robert Watts?

Mr. Seegers: I object; it's too indefinite. What block is it?

Q. 4610 Labadie avenue; that's the only one we are inquiring about, that block.

A. Yes.

Q. Did you know him?

A. Yes.

Q. Where did he live?

A. 4606. Or -4; one of those homes in there. I am not sure of the specific address; I knew the man.

Q. Isn't it a fact that he lived 4608?

[fol. 49] A. Well, that's the number, that's the Boxley estate I am talking about. If the Court please, just a minute.

The Court: You said 4608. He inquired about that.

A. There were 2 homes involved to begin with; now one home is there, that's the home—

Q. Didn't colored people during the time Robert Watts lived at 4608, live at 4606 and 4604 on Labadie?

A. I don't know about Robert Watts. I testified at the outset that 4606 was owned by Mr. Frank McElroy; I knew Mr. McElroy, he—

Q. But you did testify a minute ago Robert Watts, didn't you?

A. Yes; but he lived in the same house.

Q. Frank McElroy?

A. Yes.

Q. Well, who lived at 4604 and 4610?

A. Who lived in there? There were so many people lived in there through the years I couldn't give you those names; it would be difficult.

The Court: Well, if you don't know just tell him you don't know.

Q. Now, are you acquainted and have been during all these years with 4606 Labadie?

A. 4606; yes.

Q. Did you know a colored family named Penney who lived there from 1937 to 1944?

A. I don't know them.

Q. You didn't know them. Now, do you know a man living in the 4600 block on Labadie avenue named Elijah James?

A. No, I don't.

Q. Don't you know as a matter of fact, Mr. Koob, that he lives at 4608, in the same house Robert Watts used to live in?

A. I don't know that.

Q. And you don't know that he moved in the last year and a half, do you?

A. I don't know that. I only know that that's been occupied by colored people over a period, a span of 30 years they have been moving in and out; whether they are relatives or what they are, I don't know their names.

Q. How old do you say you are now?

A. How old I am?

[fol. 50] Q. Yes, sir.

A. I am exactly 41 years old.

Q. Now, then when you were 11 years old how close to the 4600 block of Labadie avenue did you live?

A. I lived 2 blocks away.

Q. What was your address at that time?

A. 2823 Marcus avenue.

Q. Now, haven't the population in the neighborhood of your bakery increased in the last 5 years?

Mr. Seegers: I object to it; it's too indefinite. If he wants to talk about the bakery let's specify the distance from the bakery, and the condition.

The Court: Objection overruled.

Mr. Vaughn: You went into it.

A. What distance?

The Court: Never mind, now. In the neighborhood of your bakery has the colored population increased in the last 5 years?

A. It has advanced.

Q. How far is your bakery from the Cote Brillante school?

A. It is approximately 3 blocks.

Q. Eh?

A. 3 blocks approximately.

Q. Isn't it true, Mr. Koob, the Cote Brilliante school is now and has been for the past 3 or 5 years almost entirely surrounded by colored families?

Mr. Seegers: I object to it; too indefinite to give us any picture.

A. It has been entirely surrounded by colored?

Q. I said almost entirely surrounded.

A. No.

Q. Well, haven't there been a larger number of colored people living near that school and attend it than whites?

A. No.

Q. It now has been turned over to colored children, hasn't it?

A. That's right.

Mr. Seegers: I object to it for the reason it is irrelevant and immaterial to any issues in this case.

The Court: Overruled.

[fol. 51] Q. Did you have any hand, or any part in the effort to keep colored children from having the Cote Brilliante school, Mr. Koob?

Mr. Seegers: I object to that for the reason it is certainly immaterial and irrelevant, and refers to issues in another case pending before this Court.

The Court: Overruled.

A. What is your question?

Mr. Vaughn: Read the question.

The Court: Did you have any part in bringing that suit?

A. Is that the case before the board of education? I did.

Q. And you have also a personal interest in this case, do you not, as an officer of the association?

A. I am discharging an obligation.

Q. And what obligation is that, Mr. Koob?

A. How's that?

Q. What obligation is that?

A. To the people who belong in the community there.

Q. You still haven't answered my question; I asked you what obligation is that.

A. The protection of their property.

A. And in that you are here testifying in this case in an effort to enable the plaintiffs here to prevail in this

injunction suit, in protecting, as you say, the property of the people in that community?

A. That's right.

Q. Do you know a colored woman named Sarah Young, who lives in that 4600 block on Labadie avenue?

A. I heard of her; I don't know her.

Q. Do you know what she does for a living?

A. I heard it mentioned here, that she does some work in the courts.

Q. Yes.

A. That's all I know.

Q. Did you never learn, before you heard it in this courtroom, that Sarah Young was a member, worked in the juvenile court and has for a long number of years?

A. I knew she worked with the court; but the specific court I learned while in this courtroom.

Q. Don't you know Sarah Young has lived in the 4600 [fol. 52] block on Labadie avenue, in property that she bought about 22 years ago, during all these years since that time, and now lives there?

A. Is what?

Q. That Sarah Young now lives on Labadie avenue, in the 4600 block of Labadie.

A. I said that before.

Q. That she bought about 22 years ago?

A. There have been no transfer; I testified about that before, answered that question on that before.

Q. Do you say yes or no?

The Court: He knows Sarah Young lives on the block and has lived there for some time.

A. That's what I answered before.

Q. Well, when did you first learn that she lived there?

A. When did I first learn that she lived there?

Q. Yes, sir.

A. I heard she lived there some 20 years ago, 22 years ago.

Q. 22 years ago?

A. Yes.

Q. Do you know when this restriction was placed on this property in the 4600 block on Labadie avenue?

A. 1911.

Q. 1911?

A. Yes.

Q. So at least Sarah Young moved into that block since the restriction; that's correct, isn't it?

A. Yes.

Q. Do you know that the Ward woman bought and moved into that block since the restriction, and built a house?

A. I told you what the Ward woman did; she built a house on the Boxley estate; the Ball Lumber Company built it.

Q. Do I understand you, the property on which the Ward woman's house now stands is on the Boxley estate that formerly belonged to a Negro; is that right?

A. That's right.

Q. Couldn't be mistaken about that?

A. Not if the records are right.

Q. Don't you know 4608 is the Boxley estate?

A. The records recite Dorothy Ward is the party in this particular house owned formerly by Alice Boxley King.

[fol. 53] Q. You say that's Alice Boxley King?

A. She was the former owner after it came down thro the—

Q. Were you in the courtroom this morning before the lawsuit, at least when Mrs. Sohlmann testified?

A. Yes.

Q. Do you know what number her property is in the 4600 block of Labadie avenue?

A. Yes; 4600 even. She said she was the owner of this piece.

Q. From your investigation of records do you know?

A. Do I know? Yes.

Q. What is that number?

A. 4600.

Q. And did you hear her, testified on both sides of her that colored people had lived for the past 20 years?

A. Did I hear her testify that on both sides; no, I didn't hear her testify.

Q. Didn't you hear her testify on either side next door to her colored people had lived for the last 20 years?

A. No.

Q. Or 2 doors from her?

A. I heard 2 doofs or 3 doors, but not next door.

Q. Didn't hear her testify about colored people, families, lived close to her?

A. 3 doors from her.

Q. That is a fact, isn't it?

A. Yes.

Q. Is that west of her, or east of her where these colored families live?

A. That's west of her.

Q. And that's in the 4600 block, isn't it?

A. That's right.

Q. West of her. Did you know a colored family, a colored man named Amos Hicks and his family that lived at 4614 Labadie avenue during the past 4 or 5 years?

A. (Laughing) No; didn't.

Q. Did you know a man named Shackelford who, during the last 9 years, has lived at 4610?

A. I don't know the man.

[fol. 54] Q. And did you find out by your investigation, records, these people lived there?

A. My investigation of the records ascertains the fact how long Negroes have been there.

Q. Did you see any colored children playing up and down the street in the 4600 block of Labadie avenue?

A. No; I don't see any.

Q. How often do you go over there?

A. Don't have any occasion to get over there too often. I probably pass the street there 2 or 3 times a week coming, driving through the street coming west.

Q. Do you have any Negro customers at your bakery?

Mr. Seegers: I object; it's immaterial to any issue.

The Court: Overruled.

Q. Answer that.

A. Do we have any?

Q. Yes, sir.

A. I am not in that close touch.

Q. What do you mean, you are not in that close touch?

A. I am not behind the counter. We have 22 girls representing us in sales; I wouldn't know, couldn't answer that question honestly.

Q. What position do you hold in that company?

A. I am a partner.

Q. Do you handle any part of the business?

A. Certainly I do.

Q. What particular item—what part of the time do you spend at your plant?

A. All my time there.

Q. Do you spend it in the sales room?

A. I spend it in the office, in the distribution, in production; we have 6 retail stores in north St. Louis, and I can't confine my activities to one shop.

Q. Did you, Mr. Koob, make an investigation and write those notes up for the purpose of making use of them in this trial?

A. How's that? (Question read.) I refreshed my memory with them, yes.

The Court: You made them for the purpose of this trial?

A. Purpose of this trial; yes.

The Court: All right.

[fol. 55] Q. And when did you make them?

A. These notes I have?

Q. Yes, sir.

A. I made them Monday of this week.

— Before that time, before you made those notes you had no independent recollection?

A. Oh yes. I had some references or data that was handed to me by virtue of dope that the association had.

1 p. m.-2:22 p. m., recess

Q. Mr. Koob, do any Negroes live in the 4500 block of Labadie avenue?

A. Yes; right at the very edge of it.

Q. Which edge?

A. 4562.

Q. That's where Mr. Taylor Young lives, isn't it?

A. Yes.

Q. 4562.

The Court: 4562; is that west of Taylor? Yes.

A. That's west of Taylor.

Q. That's west of Taylor.

A. I don't know how many live in it. It's a parcel of property that's occupied, that Sarah Young holds it. There may be others living in it.

Q. Now I ask you: this is 4600 even where Shelleys live?

A. That's the house in question, yes.

Q. Well, do you know whether they live there or not?

A. I am told they live there; I have—I don't know by coming in contact with them, no.

Q. Well, now you don't know who lives at 4608?

A. 4608, -10 and -14 I know are occupied by colored people, but I don't know who the, who lives in those homes.

Q. In the course of your knowledge you don't know when they moved there?

A. As I—there haven't been any people moved into those homes, any colored people moved into those homes, or rather, 'way back, occupied by colored people 20 years ago to my knowledge, in 4608 and -10.

Q. And when did 4614 become occupied by colored people?

A. 4614 I testified before, as I spoke about before, was [fol. 56] not the house that the Boxleys owned; I was mistaken there, and I verified the address myself. I didn't take the address from the city hall; it was given to me by one of the men in the record office, and I verified that only a half hour ago that it's 4614 where the Boxleys lived.

Q. Then they didn't live at 4608?

A. No.

Q. So that the property at 4608 has been occupied in the last 20 years?

A. In the last 20 years, past 20-years, at least 20 years ago; that's what I say.

Q. That's true of 4610 also?

A. 4610.

Q. And that's true of 4562?

A. They are all past 20 years, that's true, they have been occupied by colored people over 20 years.

The Court: How far east of 4600 is 4562?

A. It's immediately east of it.

The Court: Next house east?

A. That's right.

Mr. Vaughn: Next door east, your Honor.

Q. Now, these 2 blocks from Taylor avenue, what's the next block—

A. Cora.

Q. From Taylor to Cora, on both sides of Labadie avenue, those are the restricted blocks there?

A. Not entirely; those particular parcels we mention there are not restricted.

Q. Well, are there any others not restricted?

A. That I don't know, how many others; there are others, yes; how many I don't know offhand.

Q. They are probably, then, occupied and owned by white people in there who are not restricted; that's correct, isn't it?

A. I believe so.

Q. You don't know how many they are?

A. I don't know.

Q. Would you have an idea?

A. I wouldn't give an approximate idea, either; I would actually be guessing. I would rather establish something by comparing with the records, the plat-book.

Q. Well, now I understood you did arrange to show you made this investigation last week or month, or this week, [fol. 57] with the idea of testifying in this case: that's correct, isn't it?

A. Not with any idea of testifying; not with any idea of testifying. As a matter of fact, I had some misgivings about being here today.

Q. Well, you knew you were to be called as a witness yourself; do you know?

A. Through counsel this morning.

Q. Counsel asked you while you were here in the court to appear as a witness?

A. That's right; as a witness.

Q. Did you confer with anybody as to what testimony they wanted of you; with anybody?

A. I conferred with counsel this morning, yes.

Q. Anybody else?

A. No.

Q. Then you would say I am mistaken when I remember you to have testified before luncheon that you would make this survey for the purpose of testifying in this case?

Mr. Seegers: I object to the wording of the question.

The Court: Overruled.

A. That you were mistaken?

The Court: He wants to know, was he mistaken in assuming in his recollection that you testified you made these cop-

ies over at the recorder's office and refreshed your recollection for the purpose of testifying in this case.

A. Not testifying in the case, but to hand them over to counsel if he didn't have them.

Q. Well, did you say this morning that you made them for the purpose of giving testimony?

A. I beg your pardon. Did I say what?

The Court: Didn't you say this morning you made them for the purpose of giving testimony?

A. No, I didn't say that.

Mr. Vaughn: I believe that's all. That's all, sir.

### Redirect examination.

By Mr. Seegers:

Q. Mr. Koob, did you make a very recent examination of the numbers on the houses out in the 4500 and 4600 block on Labadie avenue?

A. I got them a half hour ago.

[fol. 58] Q. Half hour ago. And will you state again, so there will be no question about it, the numbers of the houses in those 2 blocks now occupied by Negroes?

A. Shall I give the numbers?

Q. Do it now.

A. They are 4562, and 4608, 4610 and 4614. With the exception of 4600, which is the—

Q. Well, excluding the present piece of property, yes. Now, within the scope of your memory have those 4 pieces of property just enumerated by you been occupied by other than Negroes?

A. No.

Q. So that for the entire period that your memory goes those 4 pieces have been entirely occupied by one or another Negro family?

A. That's right; as long as I have been associated with this organization.

Q. What type of houses are all these houses we are talking about; are they single dwellings, or flats, or what are they?

A. Well, one I believe is a flat; it was formerly a dwelling, it may still be a dwelling; that's 4652. 4608 is a cottage, and 4610 is a cottage, and 4614 is a bungalow type cottage.

Q. Single dwelling?

A. That's right.

Q. Now, Mr. Koob, do you know of your own knowledge whether or not the property at number 3562—or, 4562, 4608, 4610 and 4614, were those properties included in the restriction agreement introduced in evidence this morning?

A. They were not.

Q. Mr. Koob, how many years experience have you had in connection with the signing of these covenant or restriction agreements?

A. I should say that I have had some 18 years.

Q. When you have one of these covenants or restrictions signed up do you ever find that a certain individual may own more than one lot in the particular area being restricted?

Mr. Vaughn: If the Court please, I object to that as being wholly incompetent; I can't see the purpose.

The Court: Overruled. Let's see what it is.

Q. Do you ever find, Mr. Koob, within any area sought to be restricted you find some individuals or individual who own more than one lot?

A. Oh yes.

[fol. 59] Q. When you find that situation occurring do you have that person sign the covenant for each lot that he owns, or sign it only once?

Mr. Vaughn: Wait a minute.

A. He signs it once.

Mr. Vaughn: I object to it.

The Court: Sustained; immaterial.

Mr. Vaughn: It's also leading.

The Court: What they do generally in other cases we don't care about here.

Q. Mr. Koob, in this particular case did any of the signers own more than one lot?

Mr. Vaughn: If the Court please, there's no showing Mr. Koob had anything to do with the signing of this covenant.

The Court: This covenant was signed when?

Mr. Seegers: 1911. If the Court will permit me to say what I started to say, the purpose was to show, the Court called for evidence as to the proportion of lots signed up.

Now, we can not get a true picture of that, take for instance a covenant shows only 33 people sign, and that there are 45 different lots in this section; how can we get the proportion unless we have evidence to the effect that a person signing more than one lot signs only once, or more than once?

The Court: You can have such evidence, but Mr. Koob doesn't know.

Mr. Seegers: The objection was sustained on the ground it was immaterial, your Honor.

The Court: Yes, it was immaterial; and you asked when it was written up, when it was prepared, and he was only 7 years old then.

Q. Mr. Koob, on cross-examination you were asked this question by Mr. Vaughn: do you have an idea about how many pieces of property in the 45- and 4600 blocks of Labadie avenue were not included in this restriction agreement. Do you remember that question?

A. Yes.

Q. You may answer that question now, and give your best recollection.

Mr. Vaughn: I object to it, your Honor. He said he didn't know.

The Court: Sustained. He said he didn't know.

[fol. 60] Q. Do you have any knowledge as to the approximate number?

Mr. Vaughn: Object to that for the reason I asked him the same question; he said it would be a guess. Approximately the same question; that he wouldn't want to guess at it.

The Court: I don't want you to guess at it. Have you made any examination of the records yourself?

A. I would say I have had; I can't answer it without referring to them.

The Court: Very well; he can't answer it. Do you know how many lots there are in the 4600 block altogether?

A. How many lots there are?

The Court: Yes, sir.

A. Frankly I don't.

Mr. Seegers: I have the plat books under subpoena, your Honor.

The Court: Very well.

Q. How many separate and distinct signing of signatures or seals appear on this covenant?

Mr. Vaughn: Just a minute; the covenant is the best evidence.

The Court: That's merely a mathematical computation.

Q. Have you counted them?

A. Yes. 33.

The Court: You may check that if you wish. Here is the copy of it.

Mr. Seegers: I am merely trying to get the mathematical figure before the Court.

Mr. Vaughn: Yes; but I understand the way to get it is from the record itself.

The Court: Well, the objection is overruled; it is merely a matter of counting, and we have a copy here. You can count it, if you wish; check up on that. It saves me the trouble counting it, that's all. I would be glad to have somebody count it.

Mr. Vaughn: All right, your Honor.

The Court: Proceed, sir.

[fol. 61] Q. Mr. Koob, with respect to the questions on cross-examination involving these notes that you prepared, did you prepare these notes for the purpose of testifying in the case?

A. No, I did not.

Q. Did you prepare these notes for the purposes of trial of the case?

A. I don't quite—elaborate on that.

The Court: He testified he prepared them to assist you in the trial of the case.

Mr. Seegers: That's all.

#### Retross-examination.

By Mr. Vaughn:

Q. Well, you are interested personally in this case, aren't you?

A. Yes, sir.

The Court: Don't argue with him, please sir. He stated he prepared them to assist counsel, and is president of the association and all that; let's not argue about that.

Mr. Vaughn: My purpose, your Honor, I just want to show his interest.

The Court: Well, you asked him that before, and he has shown his connection with this organization and has shown he prepared this for the purpose of assisting counsel; to that extent he is personally interested. He isn't personally interested in the sense—(to the witness)

— You don't own any property in this block, do you, Mr. Koob?

A. No, I don't, your Honor.

The Court: Doesn't own any property in this block.

A. I show you this copy, Mr. Koob;—

The Court: Are there 33?

Mr. Vaughn: Yes, there are 33, your Honor.

The Court: All right.

Q. —ask you if you know any of the persons on there.

A. Do I know any of the persons?

Q. Yes; any of the persons whose names are signed on there.

A. You mean—I know several persons who signed this, but they, the signers that I know are dead. I know, to enumerate them,—

[fol. 62] Q. No, I didn't ask you that. So, as I understand you, the persons whose names are signed there that you knew are now dead?

A. That's right.

Q. That's correct. Thank you.

A. I know they are legal recipients of the property.

Mr. Vaughn: Move to strike out the last, your Honor; voluntary.

The Court: Sustained; strike it out.

Mr. Seegers: That's all.

Questions by the Court:

Q. As I understand, you say there's only one house occupied by colored people in the 4500 block?

A. That's right.

Q. Only one?

A. That's right.

Q. And that's between Taylor and Euclid?

A. 45 and 46.

Q. Oh, that's between 46 and Taylor?

A. That's right.

Q. One family?

A. One family.

Q. How about between Taylor and Newstead?

A. Between Taylor and Newstead there are none.

Q. None at all?

A. None at all.

The Court: All right. That's all.

MARTIN C. SEEGER, sworn, on Direct Examination by Mr. Seegers in Behalf of Plaintiffs, testifies:

Q. Will you state your name, please?

A. Martin C. Seegers.

Q. Where do you live, sir?

A. 4731 A Maffitt avenue.

Q. How long have you lived there?

A. 46 years.

Q. Do you own that property?

A. Own that property.

Q. Where did you live before you moved to this piece of property?

A. 4604—or -40 McKeever place, now known as Elmbank avenue.

Q. Now, Mr. Seegers, with respect to 4600 Lahadie avenue, how far away from that point do you now live?

[fol. 63] A. Oh, 1, 2, 3—3 blocks and a half.

Q. Is your property located within the territory outlined by Mr. Koob as being covered by the Marcus Avenue Improvement Association?

A. Yes, sir.

Q. Have you been or are you now a member of the Marcus Avenue Improvement Association?

A. Yes.

Q. How long have you been a member?

A. Since either 1923 or 1924; I ain't so sure about that.

Q. Now, how far is this address on McKeever, now Elm-bank, from 4600 Labadie?

A. Well, that would be Greer, Labadie avenue; two blocks.

Q. Two blocks. And during what years did you live on McKeever?

A. From 1896 to 1899.

Q. Is your memory fresh with respect to events that occurred during those years, at that point?

A. Yes, sir.

Q. Are you familiar with the 4500 and 4600 blocks of Labadie?

A. Yes.

Q. For how long a period have you been familiar with those 2 blocks?

A. For 49 years.

Q. Now, Mr. Seegers, going back the 49 years that you can remember of 4500 and 4600 Labadie, were there any Negroes living in either of those 2 blocks?

A. I only recall, either '23 or '24, that I got the knowledge of them Negroes being there. I did see some, but I wouldn't try to fix the date.

Q. But you are sure that since 19—well, have you known of any Negroes to move in there, into either of those blocks, since 1923 or 1924?

A. No.

Q. Well, how long prior to 1923 or '24, if you can, do you have an independent knowledge of Negroes living in those 2 blocks?

A. Well, yes, I did see some there before that. But just how long I couldn't venture to say.

Q. Well, when you were living on McKeever in 1896 and '99 do you remember any Negroes living in Labadie avenue block 4500 and 4600?

A. No; I can't remember that.

[fol. 64] Q. During your life in that neighborhood have you seen the 45- and 4600 blocks of Labadie fill up—

A. Oh yes.

Q. —with residences? What were the race of people which built up those 2 streets during your memory?

A. Whites.

Mr. Seegers: I believe that's all.

## Cross-examination.

By Mr. Vaughn:

Q. What is your name, sir?

A. Martin C. Seegers; S-e-e-g-e-r-s.

Q. And your address, Mr. Seegers?

A. 4731 A Maffitt avenue.

Q. What business? What business are you in?

A. Well, right now I am only a watchman. Used to be a clothing cutter by trade. Was until recent years.

Q. When did you move from what is now Elmbank avenue?

A. In 1899, I think, in October.

Q. Did you live close to Easton avenue on Elm avenue?

A. Close to Easton avenue?

Q. Yes, sir.

A. Elmbank runs the same as Easton avenue does; it's at least 10 or 12 blocks away from there.

Q. 10 or 12 blocks north?

A. North.

Q. When did you first become a member of this improvement association?

A. Either '23 or '24.

Q. Was that when it was organized?

A. No; it was organized in 1910.

Q. 1910. Do you mind telling us what induced you to become a member of that organization?

Mr. Seegers: If the Court please, I object to that for the reason it's immaterial and irrelevant.

The Court: He may answer it if he wishes. You may answer if you wish.

A. Why, simply to keep up the standards of the neighborhood.

[fol. 65] Q. Well, you mean by that that you wanted to keep the neighborhood white?

A. Not only that; keep away slaughter houses, junk shops, anything that was objectionable.

Q. Well, do you class colored people as objectionable along with slaughter houses?

Mr. Seegers: I object to that for the reason it is argumentative.

The Court: Sustained.

Mr. Vaughn: I would say my one, my purpose is to ascertain the mind of this witness. I know your Honor's rule, but I am doing that for the purpose of the record.

The Court: We don't want to get in such discussions as that, comparing colored people to slaughter houses, things of that character; we want to keep all such things as that out of the case. I am sure he has no such idea in his mind.

A. No.

The Court: It isn't a question of them being objectionable; it is a question of whether or not they violated the contract the parties made between themselves, regardless of everything else; that's the only question in the case. You don't have to be a nuisance to violate a restriction.

Mr. Vaughn: I don't know that I quite understand, your Honor.

The Court: I say you don't have to be a nuisance to violate a restriction.

Mr. Vaughn: I am addressing my question now to your Honor's remark; as I understood that that is the only question in the case.

The Court: The question in the case is whether equity would enforce this contract between the parties; that's the question in the case, of course, under the circumstances as shown by the evidence. And of course your constitutional questions are in the case, too.

Mr. Vaughn: Thank you, your Honor.

Q. Do you hold any office in this association?

A. A member of the board of directors.

Q. How long have you been such?

A. Since the first of the year.

[fol. 66] Q. As such member of that board, or as a member of the organization, did you have any part in the effort of this association to keep the board of education from turning over the Cote Brillante school to Negro children?

A. Yes. On my own volition, though.

Q. Are you acquainted with Marcus avenue from Easton avenue north?

A. Yes, sir.

Q. How far north on Marcus avenue do you say Negroes are now living, north of Easton avenue?

erations which I regard as considerations of defense until a later time.

Mr. Houston: If Your Honor please, I think the character of the neighborhood is a matter of the plaintiff's case, as much as anything else, and for that reason I think that I respectfully submit that this is within the scope of the examination.

Your Honor has ruled on that point?

The Court: Yes.

Mr. Houston: All right.

Now, then, may I ask Your Honor, in the interest of saving time, that I may proceed out of turn with this witness so that I may dispose of her completely at this time, making her, or calling her, in substance, as an adverse party under the rules, to proceed and finish with my examination with her?

The Court: I will ask her to do that, as part of your case.

Mr. Houston: All right.

By Mr. Houston:

Q. What price did you pay for your property, Mrs. 120 Hodge?

A. \$4,350, I think.

Q. And at that time did you have a garage, or was there a garage?

A. There was no garage.

Q. Was there electric light or gaslight?

A. No, there wasn't any in that section of the city at that time. The gas light, but there was no electricity up that way.

Q. Was it hot air, steam or—

A. Hot air.

Q. Hot air heat. And the size of the house is—what?

A. Well, it is 20 feet on Bryant Street, and 30 feet 10 inches on the alley that runs that way, and an 18 foot alley that runs in back.

Q. And the depth?

A. Well, this I can't tell you exactly just what it would be.

Q. How many rooms?

A. Six rooms.

Q. A finished basement, or unfinished basement?

A. Just what do you mean by "finished" or "unfinished"?  
Concreted, or what?

121 Q. No, I mean like they finish it for recreation purposes.

A. No, no; not that, no—it was concreted throughout.

Mr. Houston: I will ask this question, Your Honor, and Your Honor can rule on it as to whether I may ask it.

I ask the question because I want to explore the limits of Your Honor's ruling. I mean, I am not trying to be contumacious, but at this time I am trying to determine—

The Court: You may state your question.

By Mr. Houston:

Q. Mrs. Hodge, have you any children?

A. No, sir.

Q. And Mr. Hodge has no children?

A. Certainly not.

Q. Well, there might have been a first marriage.

A. That was our first marriage, for the both of us.

Q. All right. There is nobody left in your family, then, except you and Mr. Hodge?

A. That is all that lives there, yes.

Q. Do you occupy the house alone, or have rooms?

A. No, we occupy it alone.

Q. Now, you have made no attempt to get the Assyrians out, have you?

A. Why, no, we have not.

Q. Or the Italian people out?

122 A. No, sir.

Q. Do you know anything about the Assyrians as to whether they have negro blood in them or not?

A. Well, I wouldn't think so, not by their looks.

Q. So that you judge people by their looks, is that correct?

A. Well, I don't go into their case history to find out where they came from, I accept them as they are.

Q. Does that mean if a very fair person comes to you and says that they are not negroes, that you would accept them as they are?

A. Says they are not negroes?

Q. Yes.

A. Well, I don't know whether I will accept them or not.

Q. You know nothing about the history of the Mediterranean peoples?

Mr. Gilligan: If Your Honor please, I think it is entirely out of all range, I think I shall object.

The Court: Sustained.

Mr. Houston: Exception noted.

Mr. Urciolo: Your Honor, I think it might be in order to state at this time that I expect to produce tomorrow morning expert testimony as to the racial characteristics of the Mediterranean peoples.

123 The Court: What does that have to do with this situation?

Mr. Urciolo: I meant that——

Mr. Houston: What will it have to do?

Mr. Urciolo: It means this: That, for example, my meager studies as an anthropologist have shown that all Mediterranean peoples have approximately five to ten percent colored blood and I expect to bring an expert to testify to that effect.

The Court: That is all right, but that is not before the Court now.

By Mr. Houston:

Q. Mrs. Hodge, your house is the same type of construction as the houses beginning at 154, which is not covenanted, is that true?

A. I don't know, because I have never been inside of them.

Q. Outwardly?

A. Outwardly, they have porches, the same as we do, but anything else, I know nothing about.

Q. Outwardly, the houses 154, 156, 158 and 160 have the same general appearance as your house, 136?

A. Well, inasmuch as the porch, I don't know whether this has a bearing on it, but they do have an entrance to their cellar from the front, which we do not have.

124 Q. The same number of stories?

A. Yes, and I suppose the same number of rooms, but I have never been in them.

Q. The same number of stories; they have the same outward type of set of windows and the same decorations?

A. Yes, the same thing.

Q. Now, how long after you bought were the houses from 142 to 152 built?

A. Why, I think they started to break the ground there about two weeks after I went in the house, but they were not completed, of course, until sometime later, and—Your Honor, I would like to make one statement to Mr. Houston right now.

The Court: No, just answer the questions.

The Witness: Well, I have answered the question. There is something I wanted to say.

Mr. Gilligan: I think what she had in mind was as to the original owner of the houses. She omitted one and she wanted to get that into the record.

The Court: Is that what you wanted to say?

The Witness: Yes, sir.

The Court: You may make your statement.

The Witness: In naming the original owners, I omitted the Luskeys at 148. You see, they bought one of the houses that I was being questioned about, one of the last 125 built ones, 148. They were original owners.

By Mr. Houston:

Q. All right; 142 to 152 were begun in 1909 and finished in the ordinary course of construction, is that right?

A. Yes.

Q. Now, the Luskeys were original owners of 148?

A. Yes, sir.

Q. Now, can you tell me, Mrs. Hodge, whether the majority of persons who were original owners are living or dead, now?

Mr. Gilligan: I object again, if Your Honor please, I think it has no point whatever in connection with this case.

The Court: Sustained.

Mr. Houston: Your Honor, of course, in view of the rule, I do not have to note my objection, but for the purpose of the record—Your Honor realizes I am exploring.

The Court: You have automatically an exception to all adverse rulings.

Mr. Houston: All right, Your Honor.

I have no further questions of Mrs. Hodge at this particular moment. I am reserving the right to recall her.

The Court: As your witness?

Mr. Houston: As an adverse party, under the rules. 126 The Court: We will see when the time comes.

Mr. Gilligan: Even if you called her as an adverse party, she might be adverse, but still would be called as your witness.

Mr. Houston: But without my vouching for her.

Mr. Gilligan: She does not have to be vouched for by you.

I think that is entirely in order, in the light of the remark he made.

Mr. Houston: I have finished, Your Honor, with the right to recall.

Mr. Gilligan: Mrs. Hodge, as to the question of price of your property—

The Court: Wait a minute.

Mr. Gilligan: Pardon me.

### Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, you have read this complaint, before you signed it?

A. Why, certainly.

Q. How old are you, Mrs. Hodge?

A. How old am I?

Q. Yes.

A. 63.

Q. Mrs. Hodge, I understand that there are then  
127 four original owners left, according to you?

A. Yes, sir.

Q. They are yourself, Mr. Wrightsman, Mr. Lanigan and the Luskeys?

A. Yes, sir.

Q. Now, isn't it a fact that Mrs. Luskey—

The Court: Pardon me, but take your finger away from your mouth so we can hear you better.

Mr. Urciolo: Sorry, sir.

By Mr. Urciolo:

Q. Is it not a fact, Mrs. Hodge, that the original Mrs. Luskey is dead?

A. The original Mrs. Luskey?

Q. Yes.

A. Oh, no; you mean the one that occupied 138?

Q. That occupies 148, now.

A. Now, she is not dead, the same one is in there.

Q. Isn't that Mrs. Luskey, Mr. Luskey's second wife?

A. No, sir.

Q. His first wife?

A. First wife so far as I know.

Mr. Gilligan: I must object to the line of questioning, if Your Honor please. I do not see where that has the slightest bearing on the issues in the case.

The Court: Sustained.

128 Mr. Urciolo: If Your Honor please, I am merely asking—

The Court: I understood the question.

Mr. Urciolo: She said the Luskeys were the original owners. It was my understanding that the present Mrs. Luskey was the owner's second wife.

The Court: What is your next question?

Mr. Urciolo: The next question—

By Mr. Urciolo:

Q. The Wrightsman- are original owners?

A. They were the original owners, so far as I knew, Mr. Urciolo, because they were there when I came into my home, and so far as I know they were the original owners, yes.

Q. Mr. and Mrs. Wrightsman?

A. Yes, sir.

Q. Both are now living?

A. No, Mrs. Wrightsman has passed away.

Q. Mrs. Wrightsman has passed away?

A. Passed away last February.

Q. So, consequently, as to that house, the original grantees are no longer there?

A. Mr. Wrightsman is still there.

Q. One is still there?

A. Yes, sir.

Q. All right. Now, as to the Lanigans, Francis M.

129 Lanigan, you say he was an original owner?

A. Yes, sir.

Q. Is he still there?

A. No, but his daughter still occupies the home.

Q. The daughter was not an original grantee, was she?

A. No, but still in the hands of the Lanigans.

Q. Therefore, assuming as you stated that Mrs. Luskey is also an original grantee, then there are two original grantees out of the twenty there, is that correct?

The Court: That is argumentative.

Mr. Urciolo: I withdraw the question, Your Honor.  
Sorry.

By Mr. Urciolo:

Q. Mrs. Hodge, who sold the Hurd house, 116 Bryant Street?

Mr. Gilligan: If Your Honor please, I object to that question. If he wants to establish that, let him establish it in a way which is proper. I do not see that this has anything to do with it, this witness.

Mr. Urciolo: Here is why I ask the question: My defense—after all, I am only a defendant in the second case, that is why I so strenuously objected to the cases being joined, my defense is that my houses were not sold until longer after the house at 116 was sold to Hurd. If he is a negro,—if he is not a negro, or an Indian, then, of course—

The Court: That is your defense?

Mr. Urciolo: That is my defense.

The Court: And you are not putting in your defense now?

Mr. Urciolo: No, I am asking her for the purposes of the record. If I sold the Hurd house—

The Court: Objection is sustained.

Ask your next question.

By Mr. Urciolo:

Q. Mrs. Hodge, when you filed suit for 116 Bryant Street in the so-called Hurd case, did you attempt to get other owners as plaintiffs?

A. I didn't attempt to get them because we knew that Mr. Hurd moved in, as I stated yesterday, we contacted our lawyer, Mr. Gilligan, because all the plaintiffs were ready and they met at my house. I did not attempt to go out.

Q. Who are the plaintiffs?

Mr. Gilligan: They are in the record.

Mr. Urciolo: They have been changed, Your Honor.

The Court: The record will show who the plaintiffs are, of course.

By Mr. Urciolo:

Q. Did you try to contact other owners of those 20 houses?

A. Yes, sir, I did.

131 Q. Whom did you try to contact?

A. Mr. and Mrs. Wrightsman, Mrs. Wrightsman was alive but critically — at that time, but I contacted them.

Q. And did she refuse to sign?

A. Well, they refused on the ground that Mrs. Wrightsman was critically ill, and they didn't want to appear in court, but they were ready to sustain us so far as the money was concerned, and they have.

Q. Whom else did you ask to join, of those 20 owners?

A. Mrs. Garzoni.

Q. Did she refuse to sign it?

A. Well, Mrs. Garzoni doesn't own the property, her mother owns the property and was ill at that time.

Mr. Gilligan: I merely want to make this plain, that all that was gone over by Mr. Houston and is definitely merely a repetition.

The Court: I do not see that there is any occasion for going over the ground that Mr. Houston has covered.

However, I understand that —

Mr. Urciolo: I am defending my own case, and necessarily; I only have an interest in one case.

The Court: What is the question?

Mr. Houston: This is an examination about 116 Bryant Street, in the case in which Mr. Urciolo is not involved. I take it he may be developing his examination in his  
132 own defense, for which I am not responsible; but so far as Mr. Hurd's interest is concerned, then I respectfully want the record to show that we object to any examination as to 116 Bryant Street or as to Case 26,192, and that we are not bound by any answers given under this examination.

The Court: You may proceed.

Mr. Urciolo: Thank you.

By Mr. Urciolo:

Q. Mrs. Hodge, whom else did you ask to join, the 20 owners in that section?

A. Mr. Perdue.

Q. Mr. Perdue?

A. Yes, sir.

Q. Did he sign?

A. No, he kept promising to do so, but never came to do it and I didn't ask him any further questions.

Q. Whom else?

A. That is all. That is, on the original case, 116, Mr. Hurd's case, that is all.

Q. Did you ever contact me or Mrs. Urciolo, if she would join in putting them out?

A. I did not.

Q. You did not?

A. No, sir.

Q. Thank you. I have one other question, I think.

133 You have stated, as I recall, that the Hurd's were colored people.

A. I stated it merely because Mr. Hurd told me himself that he was a negro and I asked about his wife and he said that she was a negro, so I couldn't do any more than state what Hurd said.

Q. In other words, you have never seen his wife?

A. Never, until today. I think I saw Mrs. Hurd, I believe she is.

Q. I speak as of the time you filed suit.

A. No, not her. I took his word for it.

Q. In one of your answers, if you recall yesterday afternoon, with reference to certain persons who moved in 144 Bryant Street, and finally were asked to move out, you stated they were definitely negroes.

A. They certainly were definitely negroes.

Q. In other words, there are—you make a distinction between negroes and some that definitely are negroes, and some that are slightly negroes?

A. Well, I consider that they all—no matter how dark or light they are,—They were very dark colored people.

Q. Now, you had a conversation with Mr. Savage?

A. Mr. Savage?

Q. Yes.

134 A. Yes.

Q. Did you ask him if he was a negro?

A. No, I could see that he was.

Mr. Urciolo: I don't want to have to ask that the record be read, but my understanding yesterday was that she stated that she asked if he was a negro.

The Witness: No, I did not.

Mr. Urciolo: I will reserve that.

By Mr. Urciolo:

Q. What else did you tell Mr. Savage?

A. Well, to be perfectly frank, I told him that I thought he paid too much money for his house, as I understood what he paid for it; and that it was very badly in need of repairs, that was according to the people who lived there formerly—your tenants.

Q. What else did you tell him?

A. That is all.

Q. Did you tell him that Mr. Urciolo only paid four or five thousand for the property?

A. No, I didn't, because I don't know what you paid for it, Mr. Urciolo.

Q. You did not?

A. No, sir. I did say, however, that if he paid \$6500, he would have been paying a good price for it.

Q. Would you take \$6500 for yours?

135 A. No, I wouldn't, because my house is in tip-top condition.

Q. How much would you take for your house?

A. I wouldn't take anything for it.

The Court: Let's get along with the issues of the case.

Mr. Urciolo: Your Honor, I meant that, the reason I am asking is this, Your Honor, the allegation reads that the presence of negroes would be highly depreciative, would depreciate the value of the property.

Now, I think I should be allowed to ask in what way it would depreciate her property.

The Court: Well—

Mr. Urciolo: Read from paragraph 10:

“Plaintiffs aver that the above-mentioned and described deeds of Lots 133, 134 and 136, square 3125, to the respective Negro defendants are a nullity and of no effect, and said deeds and conveyances confer no property rights upon said defendants; that the contemplated occupancy of said property by the Negro defendants, as well as to permit the deeds and conveyances to remain a matter of record, will be injurious, depreciative and absolutely ruinous of the real estate owned by plaintiff, and will be harmful, detrimental and sub-  
136 versive of the peace of mind, comfort and property rights and interests of plaintiffs and of other property owners, and said neighborhood will be-

come depreciative in value and undesirable as a neighborhood wherein white people may live. The injury to plaintiffs is irreparable and is incapable of ascertainment and compensation in damages, and the only adequate remedy is by way of injunction."

The Court: Well, it is not proper cross-examination. It may be your defense.

Mr. Urciolo: I would like to make this tender, Your Honor, for the purposes of the record.

I am tendering now a cash offer of \$8,700 cash to Mrs. Hodge. That is double what she paid for it in 1909.

The Court: You cannot make a tender like that until you are ready to make proof, and that will be in your defense.

Mr. Urciolo: Thank you, and may I ask, in line with the same defense, what rents these tenants paid? My defense is this: Rather, my purpose is this—that I want to show that the tenants on Adams Street in the same square in the adjacent block are paying double what the white tenants are paying—

The Court: I did not hear that subject opened in direct examination.

Mr. Urciolo: Thank you. I want to ask one more  
137 question.

By Mr. Urciolo:

Q. Mrs. Hodge, how far is your house from the Hurd house?

A. Well, they are at 116 and I am at 136.

Q. Let me see, that would make them—ten houses.

A. I judge so.

Q. Approximately 20 feet each, that would make about 200 feet.

A. I guess so.

Q. Now, how near is the nearest colored person to you in the non-covenanted area?

A. 154 is the nearest one.

Q. Is that nearer to you than the Hurd house?

A. Well, I am at 136, that is—

Mr. Gilligan: That is a matter of arithmetic, and you ought to be able to figure that out yourself.

Mr. Urciolo: I am testing the good faith, Mr. Gilligan.

The Court: The objection is good. You have an exhibit that would show that, have you not?

Mr. Urciolo: May I inquire as to the rent that these tenants pay, Your Honor?

The Court: It has not been opened up in direct examination.

138 By Mr. Urciolo:

Q. Mrs. Hodge, would you please explain to me, I really am asking for information,—in your answer to Mr. Houston's questions, in answer to whether Mrs.—the occupants of 150, Mrs. Stewart, were Americans, you have stated "you guessed that they were Americans." May I ask what you meant by that?

A. I said that they were colored, but that I supposed they were Americans.

Q. I think your answer was "you guessed" they were Americans.

A. As a rule, they are.

Q. I mean, don't you know?

A. No, I don't know whether they are Americans or not. They are called it.

Q. But you know as to how white they are?

A. Yes, I knew, but I don't know the Stewarts, but I did say that they were colored people and I supposed that they were Americans.

Q. And what is your test as to how you can tell?

Mr. Gilligans: Americans, you mean?

By Mr. Urciolo:

Q. How you tell colored people?

A. Well, I have no specific test, Mr. Urciolo, for telling them; simply, you see they are colored, as a rule, you  
139 know.

Q. Color?

A. And I think that there are different characteristics of colored people, possibly not all of them, depending upon how much white blood they have in them. Some, I believe, have more characteristics of white or colored, I will say.

Q. Well, I mean what are those characteristics?

A. Usually there is a characteristic around the eyes.

Q. Eyes?

A. And as a rule the nose.

Q. Nose?

A. Those are the two main ones, I would say.

Q. Any others?

A. No, not that I think of. Well, the mouth possibly.

Q. The mouth? In other words, you maintain you can tell a colored person from a white person by his mouth, the color of his skin, eyes or nose?

A. As a rule.

Q. As a rule. Sometimes you can't—

A. Sometimes you can't do it, but as a rule you can.

Q. In other words, you admit that you may be mistaken sometimes?

A. Possibly, yes, sir.

Mr. Urciolo: Thank you. No questions.

Mr. Houston: If Your Honor please, there is one  
140 thing about the matter of direct examination which I got thrown off, by cutting off on my examination. I would like to go into the question of signing these papers by the plaintiff, inasmuch as Mrs. Hodge was the moving party.

#### Cross-examination (Resumed).

By Mr. Houston:

Q. Going to Case 26,192, Mrs. Hodge—

141 A. Which is that, the Hurd case?

Q. The Hurd case. Now, did Mr. Gilligan turn the papers over to you to obtain signatures?

A. He did not.

Q. How were those signatures obtained?

A. They were all signed, they met at my home, each one signed it.

Q. Who was present?

A. Mr. Gilligan—

Mr. Gilligan: You mean, in addition to the plaintiffs?

Mr. Houston: Let's find who was there.

Mr. Gilligan: She said they were all there to sign it.

The Witness: Every plaintiff signed it.

Mr. Houston: Who is "all"?

Mr. Gilligan: The plaintiffs.

Mr. Houston: If you are on the stand—

Mr. Gilligan: It is a trifling type of examination.

The Court: Do you want her to repeat the names of the plaintiffs?

Mr. Houston: That is right, sir. This happened to the deposition of the Italian plaintiffs. There is a very definite point to it. Mr. Gilligan knows it, because he was there at the deposition.

Mr. Gilligan: What?

Mr. Houston: Knows that the Italian plaintiffs  
142 didn't know what they were signing, it wasn't read over to them. Some of them don't read English and there wasn't any notary there.

The Court: Your question is, Who was there?

Mr. Gilligan: She says "All the plaintiffs."

Mr. Houston: That is right.

The Court: And Mr. Gilligan?

Mr. Gilligan: I want to deny his statement that I know it is such a thing as he said. I don't know, at all. I want to get that into the record.

Mr. Houston: Let me get that.

Mr. Gilligan: You made the statement that I knew—

Mr. Houston: What?

Mr. Gilligan: That the Italians—

The Court: I think the answer to your question as to who was there, when she said "All the plaintiffs," I think that is sufficient without naming the plaintiffs.

By Mr. Houston:

Q. Who else was there?

A. Mr. Gilligan and Mr. Keefer, a notary.

Q. That is on 26,192?

A. If that is the Hurd case.

Q. That is the Hurd case.

A. That is right.

The Court: 26,192?

143 Mr. Houston: 26,192.

It is my teeth, Your Honor.

The Court: They make you talk double.

Mr. Gilligan: I must say those teeth are making him ask a lot of questions.

By Mr. Houston:

Q. Mrs. Hodge, that was Mr. Keefer, Mr. Gilligan and the plaintiffs?

A. Yes.

Q. On the Hurd case?

A. Yes, sir.

Q. When was that? I mean to say, approximately what time of day was it, or night?

A. It was at night.

Q. Now, let's go to the Urciolo case. That is the case as to Savage, Rowe and the rest of them.

Where was that signed?

A. Well, Mr. Gilligan was out of town and he brought the case to me and asked me to get it signed and I did get it signed by going to the different homes of the plaintiffs.

Q. Who went with you?

A. Nobody, I went alone.

Mr. Houston: That is all.

#### 144 Further Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, you took the paper to the various plaintiffs to get it signed?

A. I did.

Q. Then what did you do with it?

A. Took it home.

Q. Then what did you do with it?

A. Yes, then Mr. Keefer, the notary, came there, and I swore in front of him that I had been present when these were signed, or whatever it said at the bottom, signed my name and it was notarized by Mr. Keefer.

Q. Let's see the DeRitas, and Marchigianis were not present and didn't swear before Mr. Keefer?

A. No.

Q. Keefer took your acknowledgment that you saw it?

A. No, I didn't see Mr. and Mrs. Marchigiani sign it because they had to take it over to their home, they are away in Maryland, understand.

Q. But the DeRitas, Mr. DeRita didn't sign in front of Mr. Keefer?

A. No.

Mr. Urciolo: I think, Your Honor, that this calls for grounds for dismissal forthwith, since these people have never sworn to this complaint, or the plaintiffs be

145 withdrawn, one of the two.

Mr. Gilligan: I am afraid our friend is not familiar with the rules, if Your Honor please.

The Court: The complaint shows that it was sworn to by this plaintiff and purports to have — signed by not sworn to by other plaintiffs.

Are there any further questions?

Mr. Urciolo: Yes, sir.

By Mr. Urciolo:

Q. Mrs. Hodge, were these complaints read, was this complaint I am referring to, the Urciolo case, I had no interest in the other, — was that read to the plaintiffs, to the DeRitas and to the Marchigianis?

A. No, I didn't read it, but I had read it and explained it to —

Q. You read it?

A. Yes.

Q. And explained it to them?

A. Yes.

Q. All at the same time?

A. No, at different ones. I know that Mr. and Mrs. Marchigiani read it because they took it out there and read it, I am sure of that.

Q. How about Mr. and Mrs. DeRita?

A. No, they didn't read it because I explained it to  
146 them.

Q. Together or separately?

A. Together.

Q. What time of night was it?

A. It was in the evening.

Q. And how about the Giancolas?

A. Mr. Giancola didn't sign it in front of me, Mrs. Giancola did.

Q. Did you explain it to her?

A. Yes, I explained it to her.

Q. In other words, Mrs. Hodge, you are the big chief around there?

A. I guess that is what you might say. I seem to have been looking after the place for more than 20 years.

The Court: You have answered.

Mr. Urciolo: Your Honor —

The Court: She has answered.

Mr. Gilligan?

# Redirect examination.

By Mr. Gilligan:

Q. You stated you paid \$4250 for the property when you bought it?

A. I think that was right, Mr. Gilligan.

Q. Have you put any improvements upon it since that time?

147 A. Yes, we have a great many improvements.

Q. What would you be willing to sell it for today?

A. I wouldn't sell my house under \$12,000.

Q. And then would not sell it to colored, or would you?

A. No, I would not.

Q. Was there a meeting of the plaintiffs in your house or elsewhere before this second case was brought?

A. Before the second case was brought—yes, sir, there was, in my home.

Q. And was the question discussed there as to the various defendants?

A. Yes, sir.

Q. And what was the instruction given to me at that time as the attorney for these plaintiffs?

A. Well, for you to bring another suit the same as the first one.

Q. And then you say I turned over to you the complaint?

A. Yes, sir.

Q. And explained to you what to do?

A. Explained to me, and I read every word of it.

Q. Did I say anything to you about making sure the plaintiffs understood what they were signing?

A. Yes, sir, you did, very specifically explained it  
148. to me.

Q. Just because Mr. Urciolo brought up the question about your interest, just how did you go about taking hold of this matter in connection with the whole community when the matter of the enforcement of the covenant in your block came up?

A. You mean now, or earlier?

Q. Any time.

A. Well, I don't know, it is just one of those things. I got into it, I guess, and the different ones, as soon as they would hear or know of a colored person moving, they always called me and I just simply assumed the responsibility, I guess, because they wanted me to.

Q. Did you get in touch with any of the people in the community, citizens associations, or executive committee of owners?

A. I did earlier and later, too.

Q. Did they cooperate with the people on your block?

A. They certainly did.

Q. Are all the plaintiffs, knowing the costs, and others in the block, helping to take care of expenses of this suit?

A. Certainly.

Mr. Gilligan: That is all.

149 Further cross-examination.

By Mr. Houston:

Q. Mrs. Hodge, how much has been contributed to date by each one?

A. To date, we have paid a retaining fee of \$85 which I turned over to Mr. Murphy.

Q. From whom did you collect?

A. From whom did I collect?

The Court: Keep Mr. Murphy out.

(Prospective witness leaves the courtroom)

The Witness: Well, Mr. Wrightsman.

By Mr. Houston:

Q. And he paid how much?

A. \$20. Miss Lanigan—

150 Q. Excuse me, Miss or Mrs.?

A. Miss Loretta Lanigan, \$15.

Q. \$15, and Mr. Wrightsman \$20?

A. Yes.

Q. All right, next?

A. Mr. and Mrs. DeRita, \$10.

Q. All right.

A. Mr. and Mrs. Giancola \$10.

Q. All right.

A. Mr. and Mrs. Marchigiani, \$10.

Q. All right.

A. Mr. and Mrs. Luskey, \$10.

Q. All right.

A. Mr. and Mrs. Hodge, \$10.

Q. Let's see—all of that has been collected to date?

A. All that has been collected. Of course, we expect to pay it when the case is finished.

Q. But that is all that is collected to date?

A. Yes.

Q. So when you say everybody else was contributing, you were slightly in error, were you not?

A. I don't know, I said everybody in the block.

Q. In other words, nobody contributed except the persons that you have listed?

151 A. That I have listed.

Mr. Houston: That is all.

Mr. Gilligan: That is all.

Whereupon—HENRY K. MURPHY was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Gilligan:

Q. Will you state your full name, Mr. Murphy?

A. Henry K. Murphy.

Q. And your address?

A. 42 Rhode Island Avenue, N. W.

Q. Your business?

A. Railroad paymaster.

Q. Directing your attention to the suits which were filed in Bryant Street, are you familiar with those, the filing of those suits?

A. Yes, sir, I am.

Q. In what capacity have you been familiar with that, and any other part of the community there?

152-154 A. As executive secretary of the Committee of Owners.

Q. And how old a committee is that?

A. About 22 years old.

Q. About 22 years old?

A. Yes.

Q. And has the executive secretary of that executive committee of owners, have you or the committee, and/or the

committee taken part in all of the cases that have been brought in that community?

A. Yes, continuously.

155 Q. Mr. Murphy, do you know whether there are any negroes or colored people living in the part of the territory east of the 100 block of Bryant Street on First Street or to the east of First Street to North Capital Street, of your own knowledge?

A. There is one colored occupant, that is at 2213 First Street, N. W., and they are under court order to vacate.

Q. Do you know whether or not any negroes have moved into the 2100 block of First Street, N. W.?

A. Yes, two or three.

Q. Any in the 2300 block?

A. No.

Q. 2400 block?

A. No.

Q. Any on Channing Street between North Capitol and First?

A. No.

Q. Bryant Street between North Capitol and First?

A. No.

Q. Adams Street between North Capitol and First?

156 A. No.

Q. Adams Street between North Capitol and First?

Mr. Houston: I object to this testimony. When he at first established his familiarity with the neighborhood—

Mr. Gilligan: I did establish that by asking if he was familiar.

The Court: He was asked.

Mr. Houston: Is he familiar with every house in the neighborhood?

Mr. Gilligan: He is familiar with the complexion of the neighborhood over a period of 22 years.

Mr. Houston: I will grant that, and the other question, does he know if there are any—if he changes the form of the question, I have no objection, but to establish a flat categorical statement I say that you have not laid a proper foundation for it.

The Court: You will have an opportunity on cross-examination.

Mr. Houston: It is not a question of that, it is a question of a foundation.

By Mr. Gilligan:

Q. W Street, between North Capitol and First?

A. No negroes.

Q. V Street between North Capitol and First?

A. No.

157 Q. U, between North Capitol and First?

A. No.

Q. Rhode Island Avenue between North Capitol and First?

A. No.

Q. T Street, between North Capitol and First?

A. No.

Q. Are there any on North Capitol Street above Channing Street in this particular—over to Lincoln Road?

A. No.

Q. Are there any houses above Channing that are between North Capitol and First,—any houses to the north?

A. No, that is not improved for dwelling purposes.

Q. What is it?

A. The filtration plant lies north of Channing Street.

Q. How far does that go?

A. Up to Soldier's Home.

Q. Soldier's home is to the north of the filtration plant?

A. That is right.

Mr. Gilligan: I think that is all.

Cross-examination.

By Mr. Houston:

Q. First Street has usually been considered the dividing line between the white and the negro population, has it not?

158 A. Up as far as Bryant, and the white population extends on Bryant west from First Street about two-thirds of the distance to Second.

Q. But as a matter of division, is it not true that the real estate men in general, among them it is considered First Street is the dividing line between the white and negro population?

Mr. Gilligan: I object to the question as to real estate men, I don't think he can answer for real estate men.

Mr. Houston: Strike that.

By Mr. Houston:

Q. You have been involved and testified in several suits, have you not?

A. Yes.

Q. Have you not testified in these other cases involving Adams Street, that First Street was a dividing line, north of Rhode Island Avenue, between the white and the colored population?

A. From Rhode Island Avenue north, but including Bryant Street two-thirds of the distance towards second.

Q. But the 100 block of Bryant Street is not a white block, is it?

A. Not entirely white, it is preponderantly white.

Q. By "preponderantly" you mean in what proportion?

A. Two-thirds white.

Q. Two-thirds white, not three-fourths?

A. No, no. I think there are 20 houses running west from First Street that have the deed covenant and they are occupied by white people except where there is a violation of the covenant in there.

Q. You are counting as white the Italians and Assyrians?

A. Why, certainly.

Mr. Houston: That is all I have.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Murphy, why did you—what is the situation as to colored, between North Capitol and First, on S Street?

A. On S Street?

Q. Yes.

A. There are quite a few there, in violation of a deed covenant.

Q. Has the Committee filed suit to restrain these people from occupying these houses?

A. They are now in the course of preparing papers to file suit there. The agreement is in effect and what has happened is in violation of the agreement.

Q. Are there any negroes between North Capitol and First, on Seaton Place?

160 A. Yes, quite a few.

Q. Has any suit been filed by your committee to restrain those negroes from occupying their houses?

A. No, sir, there is no basis for a suit there. There is no restrictive agreement.

Q. No restrictive agreement?

A. On Seaton Place, the block you speak of.

Q. Mr. Murphy, in the 1800 block of North Capitol Street, are there any negroes?

A. One family in there. It is on the west side of the street, it is either 1810 or 1811, I am confused about the even and uneven numbers, but on the west side of the street, either 1810 or 1811.

Q. Have you made an attempt to get them out?

A. There is a restrictive agreement there that expired before they moved in. There was no basis for a suit there.

Q. Did you have occasion to go to that house and ask the owners there to join in the renewal of a covenant?

A. Didn't ask them, but I called on them and had a talk with them while the restrictive agreement was still in effect, but it expired, and the—reminded them that this restrictive agreement was in effect, and asked the question whether they had sold or were negotiating a sale to colored people. They denied that, but I got other impressions.  
161

Q. Did you tell them that the Pastor from St. Martin's Church had sent you there?

A. No.

Q. You did not tell them that?

A. Oh, no.

Mr. Urciolo: Thank you, that is all.

Mr. Gilligan: I would like to ask one or two more questions where Mr. Urciolo got down far enough.

Redirect examination.

By Mr. Gilligan:

Q. What about Randolph Place, any action brought in Randolph Place?

A. Two suits pending there against parties who have violated the restrictive agreements.

Q. Is Mr. Urciolo one of the defendants in that case?

A. Yes.

Q. Are other members of his family also, do you know?

A. Yes.

Q. Mother and father and wife?

A. His mother, father, and wife—four Urciolos.

Q. Would you know whether or not Mr. Urciolo, in connection with the various suits that have been filed in this community, of ours, has been named as defendant in any other suits?

162 A. Yes, in the recent suit.

Mr. Houston: May I ask the materiality?

Mr. Gilligan: I want to bring out the fact that we have a very distinguished gentleman who causes most of the trouble in the community as defendant in that case, and also an attorney. I think it ought to be brought to the attention of the Court, all of it.

By Mr. Gilligan:

Q. Was he in the Adams Street case—

Mr. Houston: So far as I am concerned, if Your Honor please, I call your attention to 26,192 and point out the fact that Mr. Urciolo has not been and is not a party to that suit.

Mr. Gilligan: All right.

The Court: I have that in mind.

Mr. Gilligan: I have no other questions.

The Court: Did you answer about the Adams Street case?

The Witness: Mr. Urciolo was a defendant there.

Recross-examination.

By Mr. Urciolo:

Q. Mr. Murphy, how many other defendants were there in the Adams Street case?

A. I couldn't tell you from memory.

Q. The Urciolos?

A. There were others, Mr. Urciolo.

163 Q. About how many others?

A. Well, there were perhaps six or eight suits filed in that block at various times.

Q. Was I definitely in all those suits?

A. No.

Q. In how many?

A. At least one, and I am under the impression that there were two or three.

Q. And in these five or six houses, about how many altogether, roughly, how many defendants were there? You say there were two or three in each one, or four or five in each one?

A. There may have been between three and five in each one, the average, I would say, was about three or four.

Q. How many defendants were there in the Randolph Place suits?

A. Which suit do you refer to, the one against you?

Q. The one in which I was also a defendant, the one Mr. Gilligan referred to and asked you a question, if I was a defendant in the Randolph Place suit.

A. You and your wife and father and mother, that is four—the negro defendants, that is a suit involving several properties, and I would say that there are two negroes involved in each of the five or six violations there, that would make about 12 or 14 defendants.

164 Mr. Urciolo: 12 to 14 defendants, thank you.

Mr. Gilligan: That is all.

The restrictive agreement which is the basis of this case, reads as follows:

“Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any negro or colored person, under a penalty of Ten thousand dollars (\$2,000), which shall be a lien against said property.”

Mr. Gilligan: Then, if Your Honor please, in connection with that same case, there is a stipulation that the letter from J. M. Hurd to myself, dated July 25, 1944, may be received in evidence without formal proof. It is here initialed by the pre-trial Justice.

Also, in the 6th paragraph of the stipulation, it says, “The carbon copy of letter from Henry Gilligan to James M. Hurd, dated June 30, 1944, initialed by pre-trial Justice,

may be received in evidence without formal proof, provided the original of said letter is not available at the trial."

166 Mr. Gilligan: If Your Honor please, I would like to have these marked Plaintiff's Exhibits 1 and 2—no, 2 and 3.

The Court: The letter of June 30 may be marked Plaintiff's Exhibit 2 and the other Plaintiff's Exhibit 3.

(Thereupon, the documents identified by counsel as letter to James M. Hurd, dated June 30, 1944, signed by Henry Gilligan, and letter addressed to Henry Gilligan from James M. Hurd, under date of July 25th, were marked "Plaintiff's Exhibits Nos. 2 and 3," respectively, and by the Court admitted in evidence.)

167 Mr. Gilligan: This is dated June 30, 1944, and addressed to Mr. James M. Hurd, 116 Bryant Street, N. W., Washington, D. C.

"Dear Sir: On May 4th last, by deed from Francis X. Ryan and wife, recorded on May 9th as Instrument No. 12561 you and your wife, Mary I. Hurd, became the record owner of 116 Bryant Street, N. W. (Lot 114, — Square 3125) and moved into the premises. At the time you were on actual as well as constructive notice of the deed covenant prohibiting you and your wife, as Negroes, from buying, renting, leasing or in any manner occupying these premises. I have been in touch with Mr. Frederick Richmond at the District Title Insurance Company, 1413 I Street, N. W., when the deal was consummated, several times, and am informed by him that he is endeavoring to work out the whole proposition by finding you another house, so that you may remove from 116 Bryant Street amicably rather than be forced out through injunction proceedings. It has been my hope that we might have this matter adjudicated, but I am now putting you on notice that we must bring the question to an immediate conclusion. Therefore, if you have not satis-

fied me by July 7th (by nine A. M.) that your decision is to move amicably and that you have secured another location and will move by an agreed upon date, I shall prepare and file for the property owners in that block of Bryant Street an injunction suit and will make every effort to have the Court grant a preliminary injunction requiring you to move.

"It is my earnest hope that this suit may not be necessary, but I assure you it will be brought if I do not have definite assurance in the premises. You probably are informed that the District Court has granted two injunctions within the past two weeks in cases brought by me in the 2200 block of First Street and the 2,000 block of First Street, N. W. I shall be out of the city until Thursday, July 6th, at two o'clock. I trust you will call on me or get in touch with me, either personally or by letter, between two and five o'clock on the 6th.

"Yours very truly," signed "Henry Gilligan."

Mr. Houston: May I just make one inquiry, Mr. Gilligan, and that is, were you speaking about those two injunctions,—was that the Gospel Spreading Association?

Mr. Gilligan: Yes, which was reversed by the Court of Appeals later.

Mr. Houston: I wanted to make it clear.

Mr. Gilligan: Then, the reply of Hurd dated 116 Bryant Street, N. W., Washington, D. C., July 25, 1945, and signed by J. M. Hurd, and under the initials—

"Mr. Henry Gilligan, Attorney at Law,  
Washington Loan and Trust Company,  
Washington, D. C.

Dear Sir:

In connection with your threatened action to bring about removal of my wife and myself from premises known as 116 Bryant Street, N. W., Washington, D. C., for the sole reason that we are of Negro extraction, please be advised that we have no desire to litigate the matter and will be more than glad to move from the neighborhood in which we now find we are not wanted.

At the time we purchased said property from Mr. and Mrs. Francis Ryan, we examined the location and found that there were ten colored families living on Bryant Street; that Second Street between Adams and

Bryant streets were solidly colored; and that Adams Street, between Second and Third Streets was almost solidly colored. As a matter of fact, colored people occupy the homes on Adams Street on which our backyard at 116 Bryant Street borders. It was with the knowledge of this situation that we purchased premises 116 Bryant Street, N. W., from Mr. and Mrs.

170 Ryan, being under the impression and understanding that in a situation such as it exists on Bryant Street it was legally permissible for colored to occupy the property. We were greatly astonished when we received information that the people in this neighborhood desired that we be removed from the building which we purchased for our home.

As we have stated above, we do not desire to engage in any litigation with you people and we are making an effort to find another place to move to after which we will dispose of 116 Bryant Street, N. W., even if it means a financial loss to us. As you no doubt know, the situation in colored rentals is very difficult and it may take us some time to locate ourselves elsewhere. We have a proposition now to purchase another home which requires \$600 in cash. We are endeavoring to raise this amount so that we can purchase the other house, but have been so far able to raise only \$400 of this amount. If you will be gracious enough to give us sufficient time within which to either find a rental or within which to obtain sufficient funds to purchase another home, we will make every effort to move from the premises as soon as is humanly possible.

171 "We realize that if you permit us to continue in occupancy possibly the Court might hold that laches applies and therefore in order that you may be assured that no such defense will be interposed if a suit should be filed, this is to advise you that we will not interpose such a defense to any action brought. If the above statement is not sufficient to enable you to give us time within which to locate ourselves elsewhere, we shall be more than glad to provide you with any statement or document which you may feel necessary. We earnestly hope that you will give us due consideration in the matter and treat us with a little human kindness by at least giving us sufficient time within which to comply with your mandate.

The money that we invested in this house represents our lifetime savings and we would like to have the opportunity of selling the property after we vacate with as little loss as possible.

"Very truly yours,"

And it is signed "J. M. Hurd,"

That is dated July 25, 1944.

I merely call the Court's attention to the fact that the suit was not filed until November, several months later.

Mr. Houston: May I also state for the record that was not written by me. I do not share those sentiments  
172 and never would have permitted him to write the letter if I had been his counsel at that time.

Mr. Urciolo: That is what I wanted to say, Your Honor. I think it would be appropriate for the purposes of the record to stipulate or state that I had no connection whatsoever with Hurd, or the sale thereof, or this letter.

The Court: It is not claimed that you did.

173 Mr. Urciolo: I understand that, Your Honor. I am nevertheless a defendant in the same suit, that is one of the reasons I object to the consolidation.

Mr. Gilligan: Call Mrs. Margaret Giancola.

Whereupon MARGARET GIANCOLA was thereupon called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Will you state your name, please?

A. Margaret Giancola.

Q. Do you and your husband own this property in which you live?

A. We do.

Q. What is that number?

A. 130 Bryant Street, N. W.

Q. How long have you owned it?

174 A. I bought that property in September of 1936.

Q. September of 1936. At the time you purchased it, were you aware of the fact that there was any restriction against anybody buying it other than white people?

A. Well, when I went to the title company, I found out there that there was a deed covenant, but the man who sold me the house also said that.

Q. Also told you the same thing?

A. Yes.

Q. So you bought it with the understanding that colored people could not occupy it?

A. That is right, sir.

Q. And you are one of the plaintiffs in this case?

A. I am.

Q. What is your color?

A. White.

Mr. Gilligan: If Your Honor please, I have to do it, because Mr. Houston has denied the color of the plaintiffs and defendants.

The Court: All right.

By Mr. Gilligan:

Q. Are you foreign-born or naturalized?

A. No, I was born in this country.

Q. So that you are a citizen of the United States?

A. I am.

175 Q. You are a plaintiff in both cases?

A. I am.

Q. And you are anxious for this Court to keep this block, as far as it is, under deed covenant?

A. Anxious to keep my home, and the block.

Q. You intend to stay there?

A. That is right.

Q. What did you pay for your home?

A. I paid \$4500.

Q. Have you done anything to it since, in the way of improvements?

A. When I first went in I put in a new heating system, started out with that, and changed all my electrical appliances; I tore down last year the wooden porches in the back and I made three rooms, made a big double garage, scraped my floors; and I have remodeled my kitchen into a modern

kitchen, and in all I have made a home so that I want to live in it.

Q. What would you sell it for?

A. There is no price, Mr. Gilligan.

Q. When these suits, these bills of complaints in the two cases were brought to your attention,—

Mr. Gilligan: I am doing this now, Mr. Houston, in order to save the necessity of bringing her back.

By Mr. Gilligan:

176 Q. (Continuing:) —did you go over the suit with your husband?

A. My husband is handicapped in this language to a certain degree, and he depends upon me to take care of those things. Naturally, I translate to him whatever I read or hear.

Q. You say you did?

A. I did.

Q. Go over the complaint in both cases?

A. I did.

Q. Did he understand, in your judgment, when he signed it he understood what he was signing?

A. He did.

Q. You knew what you were signing?

A. I knew.

Mr. Gilligan: I think that is all, if your Honor please.

Cross-examination.

By Mr. Houston:

Q. Mrs. Giancola, at the time that you purchased on Bryant Street, did you go look at this block before you signed the contract?

A. I didn't get you, Mr. Houston.

Q. Before you signed the contract for your house, did you go up on Bryant Street and look at the block?

177 A. Well, the first time I went on Bryant Street, I visited Mrs. Marchiagiani.

Q. She lived where?

A. Lived at 124 Bryant Street.

Q. Did you go there with the idea of buying on Bryant Street?

A. No.

Q. Well, when you decided to buy on Bryant Street, did you take into consideration the entire block?

A. Well, I would say yes, the way I was made to understand, I did.

Q. Did you inquire as to whether there was a covenant on any other house except yours, in that block?

A. No, I did not, at that time.

Q. Did you,—now, that is prior to buying, you did not make any inquiry as to whether there was a covenant on any other house in the block except yours?

A. That is right.

Q. Did you prior to the time you went to the title company make any inquiry as to whether there was a covenant on any other house in the block except yours?

A. No, except that I was under the impression, as long as there were that many whites there, I was safe, and I took it upon myself, if I could not sell it to colored, I didn't think others would be able to.

178 Q. That was assumed on your part, and you asked nobody for any information whatsoever?

A. That is right.

Q. Now, did you after buying, or after settling, before you moved in, make any inquiry as to whether there was a covenant on any other houses in the block excepting yours?

A. If there was any other colored?

Q. No. Any covenant, a covenant on any other house, in the block except yours, after buying, before moving in?

A. No, I didn't ask about any other house.

Q. So that when you bought, when you settled and took your deed, and when you moved in, the only property you knew about having a covenant on it was your own house?

A. Well, up to that time,—yes.

Q. Now, prior to the time that you bought, had you seen the negroes beginning at 154, down to Second Street?

A. I was told they were there, Mr. Houston.

Q. Did you inquire as to how they happened to be there, whether they were owners or whether they were tenants or the circumstances under which they were there?

A. No, I did not.

Q. Have you had any trouble with any of these people from 154 Bryant Street down to the corner of Second Street?

A. Well, I have so far found them, Mr. Houston,  
179 that there would not be any reason to have trouble  
with them.

Q. Then the answer is—

A. No.

Q. Have you had any trouble with any of these persons  
that you claim to be negroes who have moved in east of 154  
Bryant Street?

A. Well—no.

Q. No, and the answer there is no—is your answer no?

A. That is right, no, I have not had any trouble.

Q. Now, when you bought your house, did you make any  
inquiry as to who was immediately back of you?

A. Yes, I knew that there was some white and some  
colored back there.

Q. Immediately back of your house, were there colored  
or whites at the time you bought?

A. Mr. Houston, I am under oath, and I must tell you the  
truth, I worked up until a few years ago and I never  
bothered who was back there.

Q. Well the answer is—

A. I believe there were colored people there, though.

Q. But, immediately back of you—

A. That is right.

Q. Now, have there been more colored people moving in  
on Adams Street immediately back of you since you  
180 bought your house?

A. I have never taken that much notice, Mr. Hous-  
ton. I was not interested in that street.

Q. Were you ever advised,—when was the first time that  
you had occasion, after buying your house, to investigate  
whether there was a covenant on any other house on *any*  
*other house on Bryant Street?*

A. When Mr. DeRita wanted to buy a home and asked  
me, he was at that time employed by my husband and due  
to the fact that he is handicapped in the English language,  
I take care of that—I took care of that through the man  
who sold me my home, and he was told that he also could  
not sell to colored, and in the meantime Mrs. Marchegiani  
had the same deed covenant, so I took it that it covered  
us all.

Q. Just a moment; you had not inquired about the  
Marchegiani house prior to that time?

A. No.

Q. At the time you bought?

A. No.

Q. When did the DeRitas buy?

A. I think that was in approximately '40, that is, to the best of my recollection.

Q. And that was the first time that you knew about a covenant on any other house in the block except yours?

A. That is right.

181 Q. When was the first time that you had occasion to consider whether there was a covenant on any house except the DeRita house, the Marchegiani house and your house?

A. Well, I think 144, we had rumors that that was being transferred to colored people.

Q. When was that?

A. Oh, I should say approximately two years ago.

Q. About 1943?

A. I believe so, I am not definite about it.

Q. All right, what happened then?

A. Well, I immediately contacted Mrs. Hodge, or rather, we got together about it.

Q. Which is correct, your second statement?

A. Well, I think—Mr. Houston, let's see, now, let me think a little bit. I can't remember, but I know we got together on that, Mr. Houston.

Q. All right.

A. There has been so much going on.

Q. You got together, that is, you and Mrs. Hodge?

A. And the rest of the neighbors.

Q. All right, and then what information did you get concerning the covenant?

A. Well, then, that really explained the fact that all of that property along there had a covenant up to 154.

Q. Did they tell you anything about Adams Street  
182 at that time?

A. We did not discuss Adams Street, Mr. Houston.

Q. Now, do you visit Mrs. Hodge?

A. I do.

Q. Do you remember testifying before any deposition before Mr. Middlemiss and Miss Scarborough, about two weeks ago?

A. Yes, sir, I did testify.

Q. Do you remember being asked as to who you visited in the square?

A. I believe you did ask me, Mr. Houston.

Mr. Gilligan: I would like to ask Mr. Houston if he has the testimony here?

Mr. Houston: I should be glad—

Mr. Gilligan: I am now asking you to put it in.

Mr. Houston: The point is, Mr. Middlemiss, who is a reporter in the courts, who took a deposition, has not furnished us the transcript, and I should be very glad, I think, to produce it if I could. And I ask His Honor's permission to reserve that. I have been promised the transcript today.

The Court: You may recall her.

Mr. Houston: Yes, thank you.

By Mr. Houston:

Q. Your house is one of the houses that does not have a porch, that is correct?

183 A. That is right.

Q. The last one, as a matter of fact?

A. The last one of the three-storied ones.

Q. The houses west of you have how many stories?

Mr. Gilligan: For the Court's information, that is lot 808.

The Court: Yes, 808.

By Mr. Houston:

Q. The houses west of you, Mrs. Giancola, have how many stories?

A. Two stories.

Q. And those houses have porches, is that right?

A. That is right, Mr. Houston.

Mr. Houston: I think that is all I want to ask now.

The Court: Mr. Urciolo?

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Giancola, you have stated that you paid \$4500 for your house and that you would not sell it at any price?

A. I did.

Q. May I ask, then, to please explain to me what you mean that the presence of negroes will be highly depreciative of your property, in your complaint, and absolutely ruinous?

184 I mean to the degree that as long as they come in, white people will not buy and I would like to see that neighborhood stay white.

Q. Neighborhood?

A. Yes.

Q. What do you mean by "neighborhood"?

A. Right there where we live on Bryant Street, N. W.

Q. You mean a half block on one side of it?

A. I mean two-thirds, Mr. Urciolo.

Q. Two-thirds of a block on one side of the street, the only white houses west of First Street at all, that is what you call a neighborhood?

A. That is what I call my neighborhood.

Q. Thank you. Mrs. Giancola, have you ever seen any southern Mediterranean, say, Assyrians, Turks, Arabians, Sicilians, that looked as dark or darker than some colored people, so-called?

A. Mr. Urciolo, they may be dark, but there is something about them that brings out the fact that they are of white blood.

Q. And you can always tell, infallibly?

A. Yes, I would say I practically can.

Q. You say "practically?"

Mr. Gilligan: That is what she said!

The Witness: Yes, I am staying by that word "practically."

185 By Mr. Urciolo:

Q. In other words, there may be one time, say, in 500,000 that you might be mistaken?

A. Do I have to answer you that?

The Court: No, I think not. I think it is argumentative.

By Mr. Urciolo:

Q. Mrs. Giancola, do you recall testifying at the deposition-taking two weeks ago?

A. I do, Mr. Urciolo, I believe.

Q. At that time do you recall making this remark:

"Mrs. DeRita, be careful what you say because Mr. Urciolo is right behind you. He can understand what you say."

A. I did make that remark, Mr. Urciolo.

Q. What did you mean by that?

A. Well, we feel bitter towards you for coming in and breaking up our block. We were very peaceful and harmonious there and we feel that you bought that property just to transact it over to colored people and we don't like it, and naturally we feel bitter towards you and Mrs. DeRita is nervous and high-strung and I said that she better not say anything, that is what I meant.

Q. All you mean is that she better not say anything?

A. To you, is what I meant, Mr. Urciolo.

186 Q. The remark was "Be careful what you say because Mr. Urciolo can understand Italian."

Mr. Urciolo: I am going on good faith, Your Honor.

The Court: Ask her what was said.

By Mr. Urciolo:

Q. I think, though, your remark was this: "Be careful what you say, Mrs. DeRita. Mr. Urciolo is right behind you. He can understand Italian."

A. I did say that, Mr. Urciolo.

Q. Did you mean by that—

Mr. Gilligan: If Your Honor please, let it speak for itself.

The Witness: Mr. Urciolo—

The Court: Ask her what she meant.

The Witness: Mr. Urciolo, all I meant by that was not to make any statement against you, not in regard to this case. There is nothing we have to hide about this case, or lie about it. The facts are here.

By Mr. Urciolo:

Q. Do you have any resentment against the person who first sold the house on Bryant Street?

A. I have resentment against anyone that goes into ruin a block.

Q. Then it isn't solely directed against me?

A. Yes, I have resentment against you for selling  
187 to those colored people.

Q. The question is, is it solely directed against me or is it shared also with the person or persons, who ever they were, who sold first to negroes on Bryant Street?

A. I feel against anybody who sold to them.

Mr. Urciolo: That is all.

Mr. Houston: I have a question I would like to develop, based on what she said. I want to wait for Mr. Gilligan.

The Court: No, go ahead.

Further Cross-examination.

By Mr. Houston:

Q. You stated that you objected to colored people?

A. Right.

Q. By that, you don't mean the color of the skin; take an American Indian, do you object to the American Indians?

A. The American Indians are considered red bloods.

Q. You don't object on the basis of color of skin, the fact that they are copper colored, you don't object to?

A. Mr. Houston, I object to when they say negro.

Q. When they say negro?

A. Yes.

Q. I am trying to develop the case of color. Do you know the East Indians, so-called Hindus, you have heard and seen Hindus, have you not, East Indians?

A. I have seen them in books and so forth and in  
188 moving pictures.

Q. You have no objection to the East Indian because he has very dark brown skin?

A. The complexion of the person doesn't mean anything.

Q. The complexion does not?

A. It is a fact that he is a negro.

Q. I see, so no matter how brown a negro may be, no matter how white they are, you object to them?

A. I would say yes, Mr. Houston.

Q. No matter how white they are, or educated, or anything else, you object?

The Court: She has said yes.

Mr. Houston: I wanted to get—

The Court: She has answered the question.

The Witness: I wish to finish. I want to live with my own color people.

By Mr. Houston:

Q. Well——

Mr. Houston: It is not a question of foreigners, it is a question of trying to reach all the facts——

The Court: Ask another question.

Mr. Houston: That is all.

189 Further Cross-examination.

By Mr. Urciolo:

Q. Mrs. Giancola, you have no objection if I sold six houses or more to Japanese?

A. Yes, I do——

Mr. Gilligan: That is immaterial, and out of all line.

The Court: Wait a minute, the objection is sustained.

Mr. Urciolo: I think her statement was, Your Honor, that all she wanted was white people, and that her sole objection was to negroes.

By Mr. Urciolo:

Q. Is that correct?

A. I did say that, Mr. Urciolo.

Q. Then my question is,——

Mr. Gilligan: She is speaking from the covenant itself, if Your Honor please, and I think the objection is to negroes or colored there.

The Court: The objection has been sustained.

Mr. Houston: Let's get down to this matter.

The Court: What are we going to do, go back and forth between attorneys?

Mr. Houston: This is directed to the Court.

The covenant says "Negroes or colored persons." Now, I just wanted to get a clear definition. At the present time we have been trying it solely on the basis that it meant  
190 negroes or persons of negro blood, and I wanted to make sure that that was the interpretation that we have before us, because it might simplify the rest of the examination.

Mr. Gilligan: I will be happy to answer that for counsel if he admits the fact that these are negroes.

The Court: Do you have any more questions?

Mr. Gilligan: No.

Mr. Houston: No.

The Court: You may step down.

(Witness stands aside.)

Mr. Gilligan: Call Mr. Giancola.

Whereupon—BALDUINO GIANCOLA was called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Mr. Giancola, listen carefully and speak slowly and answer the questions.

Your full name?

A. Balduino Giancola.

Q. Where do you live?

A. 130 Bryant Street, N. W.

Q. Are you a citizen of the United States?

191 A. Yes.

Q. Were you born here?

A. No.

Q. When were you naturalized?

A. Oh, about eight or nine years ago.

Q. Do you have your naturalization papers with you?

A. My wife has it.

Mr. Gilligan: I am pursuing that because Mr. Houston insisted they should be brought.

(Naturalization papers passed to witness.)

By Mr. Gilligan:

Q. Look at it first and see if that is it.

A. That is it.

(Naturalization papers passed to counsel.)

Mr. Gilligan: I would like to have that introduced. You don't need to introduce that as an exhibit do you?

192 The Court: It may be received.

(Thereupon, said naturalization papers were marked as "Plaintiff's Exhibit No. 4", and received in evidence.)

Mr. Gilligan: It shows, if Your Honor, please, that he was admitted to citizenship on June 2nd, 1936. The Court may want to see that.

By Mr. Gilligan:

Q. What is your color, Mr. Giancola?

A. White.

193 Q. White,—you are one of the plaintiffs in both these cases that are consolidated here?

A. What?

Q. You are a plaintiff in both the cases that are before the Court?

A. Yes.

Q. Did you either read or did your wife explain to you what the papers were, the complaint that was signed?

A. My wife explained it to me.

Q. She went all over it with you?

A. Yes.

Q. About both papers?

A. Yes.

Q. And then you signed them?

A. That is right.

Q. And you want—all right, that is all.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Houston:

Q. What province were you born in, Mr. Giancola?

A. Italy.

Q. What province?

A. Compopasta.

Q. And came here when?

A. I think September the 8th.

194 The Court: What year?

The Witness: I think about '23, September 8, 1923.

By Mr. Houston:

Q. And how old are you now?

A. 41.

Q. Now, before you bought your house, did you go on Bryant Street, did you visit on Bryant Street before you bought your house?

A. No, I didn't.

Q. Did you make any inquiry as to whether there was any covenant or anything before you bought your house?

A. No.

Q. Did you make any inquiry as to whether there was a covenant before you went down to the title company to settle?

A. I know what is the covenant, when she went there, when my wife went there, then she explained to complaint, there was a covenant, not supposed to sell to colored.

Q. That is when she went to the title company, she came back and explained it to you?

A. That is right.

Q. When did you go on Bryant Street prior to the time you bought? Did you go on Bryant Street at all before you bought your house?

A. I think I went one time.

195 Q. Now, did you know that there was any negroes living in the same block before you bought your house?

A. Yes, I know all way down.

Q. Before you bought your house you knew that?

A. All way down, yes.

Q. Knew that before you bought?

A. Yes.

Q. Did you know that there were negroes right back of you on Adams Street before you bought?

A. Think I did.

Q. Have you had any trouble with any of the people who you say are negroes?

A. No.

Q. Do they keep their property up just about as well as other people in the neighborhood, so far as looks from outside are concerned?

A. Well, Mister, I can't tell.

Q. What is your business?

A. Builder.

Q. You are acquainted with buildings and how they appear, are you not?

A. Some they keep right good, some of them not.

Q. How about the whites?

A. Who?

Q. How about the white houses, the same way?

196 A. Certainly, I can't see if they keep them or not keep them.

Q. How many do you visit in the block?

A. Well, I don't visit much because I go to work in morning and come home in the evening.

Q. Do you visit the Marchegianis?

A. I think I have been there a few time-, yes.

Q. The DeRitas?

A. Yes.

Q. Anybody else?

A. Well, Mr. Hodge.

Q. How many times?

A. Oh, let's say about two, three, four times.

Q. Was that in connection with the case, these cases?

A. Yes, couple of times.

Q. Did you have any prejudice against negroes prior to the time you came to this country?

A. No, I didn't.

Mr. Houston: I have no further questions.

Mr. Urciolo: I have one or two questions.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Giancola, as a matter of fact, you never did visit the Hodges until this suit came up, did you?

A. I went in there before.

197 Q. Went in there before?

A. Before.

Q. When?

A. Let's say about a year ago.

Q. Well, you never visited them before a year ago?

A. Before what?

The Court: He didn't understand your question.

Mr. Urciolo: I asked if he had occasion to visit the Hodges before a year ago.

The Witness: Well, I can't recognize if I been or not. I know I been there before, but—

By Mr. Urciolo:

Q: About a year ago?

A: Yes.

Q. In other words, since the trouble with the colored people came along?

A. No, before that.

Q. Before that?

A. Yes.

Q. Then about three years ago?

A. Yes, something like that.

198 By Mr. Urciolo:

Q. Mr. Giancola, as a matter of fact, you signed this complaint to please Mrs. Hodge, did you not?

A. If I please Mrs. Hodge?

Q. To please Mrs. Hodge?

A. No, I didn't.

Q. Why did you sign it?

A. Because we got all together.

Q. Got all together?

A. That is right.

Q. You really want anyone, negroes, anyone that looks like a negro to stay out?

A. Well, that is what the government calls—

Q. What?

A. That is what the title company told me.

Q. That is what they told you at the title company?

A. That is right, not supposed to sell to colored.

Q. You now say that you were at the title company?

A. I mean my wife explained to me.

199 Q. Your wife explained to you?

A. Yes.

The Court: Don't repeat the answers.

Mr. Urciolo: I am sorry.

By Mr. Urciolo:

Q. And you can always tell who is a colored man and who is not?

A. I think I do.

Q. You think you do?

A. Yes.

Q. You don't know—

The Court: Do not repeat the answers, it runs the record up too much.

By Mr. Urciolo:

Q. You don't know for sure?

A. Sure I know.

Q. You know definitely?

A. Sure.

Q. You cannot make a mistake?

A. I don't think—no. I don't think I make mistake.

Mr. Gilligan: What can possibly be the object of this type of questioning? This man testified he is a plaintiff.

The Court: State your objection.

Mr. Gilligan: I say he has stated that he wanted  
200 the covenant enforced and he can tell a negro now.

What else is there in following that type of questions? Is it responsive cross-examination to what has been asked him?

Mr. Urciolo: He states he is white and that certain people are colored. I think I have a right to know how he comes to that conclusion and the burden of proof is on them to prove that they are.

The Court. All right, ask him that.

By Mr. Urciolo:

Q. How do you know you are white?

A. I think United States got my papers for white man.

Q. You mean by white, by what it says on your citizenship papers?

A. That is right. My mother was white, my father was white.

Q. Your mother was white?

A. Right.

Q. And your father was white?

The Court: Do not repeat his answers.

Mr. Urciolo: Sorry.

The Court: It just doubles the record.

By Mr. Urciolo:

Q. But you don't know what your grandfather was?

A. I don't know my grandfather.

Q. So he may have been a very light Moor, let's  
201 say, for all you know?

A. When I was born my grandfather died.

Q. That isn't the question. For all you know, your grandfather may have been a Moor?

The Court: Aren't you asking for what he knows, not what he might have been?

By Mr. Urciolo:

Q. Well, in other words, you don't know what your grandfather was?

A. No, I don't know my grandfather.

Mr. Urciolo: That is all, thank you.

(Witness stands aside.)

Mr. Gilligan: Call Mr. Hodge.

Whereupon, FREDERIC ELLIOT HODGE, was called as a witness by and on behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Gilligan:

Q. State your name, Mr. Hodge.

A. Frederick Elliot Hodge.

Q. Where do you live?

A. 136 Bryant Street, N. W.

Q. What is your business?

202 A. Clerk in the Department of Agriculture.

Q. And was it your wife who testified in this case?

A. Yes, sir.

Q. What is your color?

A. White.

Q. You and Mrs. Hodge own your house jointly?

A. We do.

Q. And are you a party to the two suits before the Court this morning?

A. I am.

Q. Were you familiar with the contents of the bill of complaint before you signed?

A. I was.

Q. And then you signed them?

A. I did.

Mr. Gilligan: That is all.

### Cross examination

By Mr. Houston:

Q. Mr. Hodge, is your objection the objection of complexion of the skin as a basis of keeping persons out of the block, new persons out of the block, in the houses which are covenanted?

A. I object to people, persons, who are negroes, as it says in the covenant.

Q. So that regardless of how light the person is,  
203 if he is a negro, or how dark he is, if he is a negro—  
strike that.

Regardless as to how white a man may be, he is still a negro?

A. Still a negro.

Q. That goes down to one drop of negro blood?

A. Yes.

Q. On the other hand, if he is not a negro, no matter how dark he is, you have no objection?

The Court: He is referring to the covenant.

Mr. Houston: It says, "colored persons" here.

The Court: Yes, but he especially mentions what the covenant says.

Mr. Houston: I said I am talking about the covenant, colored persons under the covenant.

Mr. Gilligan: We also agreed, if Your Honor please, that in order to keep the cross-examination from going to too many extremes, that in these particular cases we were confining ourselves to the fact that the defendants named other than Mr. Urciolo and his wife, are negroes.

Mr. Houston: What did I say about Hurd?

Mr. Gilligan: I don't know what you said about Hurd.

Mr. Houston: You heard what I said about Hurd being an Indian.

204 By Mr. Houston:

Q. Let me ask this question: How about the American Indian, who has a copper color, is there any objection to them under the covenant?

A. We don't have any around here. We have no American Indians here in the city that live in our neighborhood.

The Court: A little while ago you asked for a limitation upon the questions, and it was stipulated that as to these two cases, the language of the covenant means persons of the negro race only.

Mr. Houston: That is right, but I also said before that I am bringing in the question of whether Hurd is an Indian or not, and I wanted to—

Is it agreed, then, if we establish the fact that Hurd is an Indian, that the covenant does not apply to that?

The Court: You have stipulated that as to these cases the covenant only relates to negroes.

Mr. Urciolo: If it was stipulated, it may have been stipulated with those two, as to the Hurd case; certainly not as to my case, as to the second case, because I take it the  
205-207 covenant reads, "Negroes or colored persons."

The Court: Well, we had a stipulation a few minutes ago and apparently you agreed to it.

Mr. Urciolo: The stipulation suggested by Mr. Gilligan and then, as I recall, nothing else further was said about it.

Mr. Gilligan: It was agreed to by Mr. Houston.

Mr. Urciolo: Certainly I did not agree to it, as to the second case.

The Court: At any rate, you heard it announced that as to these two cases, it was only claimed that the covenant ran against negroes.

Mr. Urciolo: I must make my objection, take an exception, Your Honor, because—

The Court: That is all the plaintiffs claim.

Mr. Urciolo: But the covenant reads, the covenant, according to the complaint—

The Court: You sat here and entered into the stipulation.

Mr. Gilligan: I thought so.

Mr. Urciolo: I would be glad to have the record read.

The Court: Let's proceed.

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208-211 Cross-examination.

By Mr. Urciolo:

Q. Mr. Hodge, do you visit Mr. Luskey or Mr. Wrightsman?

A. I have been down to see Mr. Luskey once in a while. I see him sitting on the porch, if I happen to go that way, and inquire how he is getting along, —

The Court: Just a minute. You have answered.

By Mr. Urciolo:

Q. Now, as to Mr. Wrightsman —

A. (Interposing:) Now, Mrs. Hodge —

The Court: You answered the question.

By Mr. Urciolo:

Q. Therefore, Mr. Hodge, being the original owners on Bryant Street, you only have one person that you still visit?

A. Well, as I say, I see Mr. Luskey once in a while on the porch. I have no occasion to go into the house.

Mr. Urciolo: That is all.

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217 Mr. Houston: If Your Honor please, we have here this morning Msgr. Cooper, of Catholic University. He has a class at Catholic University at 11 o'clock and we would like very much, if we could, to put in that part of our defense now, just Msgr. Cooper's testimony. He is an expert and we are offering him as an expert.

The Court: Do you have any objection?

Mr. Gilligan: An expert as to what?

Mr. Houston: As to color strains, negro bloods, characteristics, some of the Indian populations, the racial attributes of Assyrians, that is all elemental in here on the question of the effectiveness of the covenant, and the objective will be achieved.

218 Mr. Gilligan: I have to object if your Honor please, to that type of testimony. I think it is entirely out of point in connection with this case.

Mr. Houston: It is part of our defense, Your Honor.

The Court: The Court thinks it should be limited to the distinction between the white race and the negro race.

Mr. Houston: That may be true. Also, I mean to say—  
All right, as that is the basic line.

Mr. Gilligan: Under those circumstances, if it is to be limited, I withdraw my objection.

The Court: Very well, then; you may call Msgr. Cooper.

Whereupon MONSEIGNEUR JOHN M. COOPER was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Will you please state your full name, Monseigneur?

A. John M. Cooper.

Q. And you are a professor—

A. Anthropology.

Q. Head of the Department of Anthropology at Catholic University?

A. I am.

Q. You are the author of several pamphlets, and  
219 you are editor of the Review on Anthropology?

A. I am.

Q. You recently testified before the Congressional committee on questions of anthropology?

A. I did.

Mr. Houston: Is it conceded without further qualifying the witness—

Mr. Gilligan: He is qualified on anthropology, sure.

The Court: Very well.

By Mr. Urciolo:

Q. Dr. Cooper, assuming that you put together a group of 500 medium brown-skinned mulattoes, and another group of 500 persons of about the same shade, consisting of natives of India, Assyrians, Sicilians, Greeks, Portugese, Spaniards, Cubans, Puerto Ricans and Mexicans, would you be able to

distinguish infallibly which ones were negroids and which ones were caucasoids in each of these thousand cases?

A. No; in some cases, yes; but in a great many, no.

Q. North Africa is considered—What is North Africa considered, caucasoid, or negroid, dominantly?

A. Dominantly caucasoids, from the Sahara, north.

Q. How are Assyrians classified?

A. Caucasoid.

Q. Between 500 light-skinned Arabs in North Africa and 500 Norwegians, would you expect somewhat greater  
220 negroid inheritance in either group, as compared with each other?

A. Slightly greater in the Arab of North Africa.

Q. And are the Arabs of North Africa considered negroid or caucasoid?

A. Dominantly caucasoid.

Q. Can you in all cases make certain that a given individual of very fair skin has no trace of negro ancestry?

A. Would you read that again, I want to get the question.

Q. I will rephrase the question, differently.

Could one make sure by any simple visible physical traits, such as fingernails, eyes, lips, nose, that a given light-skinned individual thought to be part negroid, is actually so?

A. None of these ordinary criteria are reliable. A highly frizzly hair is a very important criterion, but you get that occasionally even in caucasoids. One recent case has been reported in Norway of a family, typically blonde Nordics in which, however, there is a distinct kinky, grizzly hair. We do not know the cause of that. In most cases, highly kinky hair would be a very strong indication, but not absolutely infallible. These other criteria, such as the stripe in the fingernail, or coloring of the fingernail, are not reliable.

Mr. Urciolo: I have no further questions.

Cross-examination.

By Mr. Houston:

Q. Doctor, were you familiar with any of the  
221 studies about negroes in the United States, passing over to the white group?

A. In a general way, but it is not my particular field.

Q. Is that a recognized social fact?

A. Oh, yes; definitely.

Q. And going on all the time?

A. Yes.

Q. Is the reason in part because there are no reliable tests for making the distinction between them?

A. That is true.

Q. Is another reason the fact that prejudice requires them to pass for white in order to obtain social, economic and political benefits denied them if identified as negroes?

A. I think so.

Q. And "caucasoid" does not mean pure white, but dominantly—or what?

A. I have used the term "caucasoid" here as, well, predominantly white, to cover the possibility that there may not be any absolutely pure races. A highly technical problem in genetics lies there. That is, as to whether the genes in the course of many generations, get lighter, or not. It is an un—it is undecided upon.

Q. It is also undecided whether there is any such thing as a pure white race?

A. Undecided.

222 Q. As a matter of fact it is largely a social concept varying from place to place and from time to time differing, as to the boundaries as to what is meant by the term "white"?

A. Social concepts enter very largely into the problem, but of course there is also the physical basis.

Mr. Houston: Thank you.

Cross-examination.

By Mr. Gilligan:

Q. This question you answered of Mr. Houston's, in regard to negroes passing over into whites,—

A. Yes.

Q. You simply mean by that that many times people that may have negro blood, pass as white?

A. Yes.

Q. That is all?

A. Yes.

Q. So that you can't always tell by looks?

A. Yes.

Q. Mr. Houston brought that out himself, because of prejudice, they have to pass as whites in order to—is that correct?

A. Yes.

Q. Is there any other test that might be used, outward tests, to determine whether a person is negro or white, except the kinky hair, perhaps?

223 Q. I don't know of any, with a very fair skinned negro and as you know in many cases of one-quarter or one-eighth negro blood, the skin is very, very fair. I could give you statistics, if you wish them.

Q. We also have a case along that line.

Mr. Gilligan: I don't think there are any other questions.

The Court: Thank you very much, Doctor.

The Witness: All right, sir.

Mr. Houston: May the witness be excused?

Mr. Gilligan: No objection.

The Court: Yes.

(Witness excused.)

Mr. Houston: As I understand it, it is conceded, as I take it, that the American Indian is non-negro?

Mr. Gilligan: I am not conceding anything.

Mr. Houston: May I put just one more question to the doctor?

Mr. Gilligan: If Mr. Houston is going to attempt by Dr. Cooper to prove that American Indians are not negroes, I object to it. I do not see that it has any bearing in this case.

Mr. Houston: I told you that I was going to establish the fact that Hurd was an Indian.

Mr. Gilligan: Despite the fact that he says he is of negro extraction?

224 Mr. Houston: I will have that explained to you, too.

The Court: You might put the question.

By Mr. Houston:

Q. Doctor Cooper, the American Indian: Is he considered to be of negro extraction, or not?

A. Not of negro extraction.

Mr. Houston: That is all.

## Further Cross-examination.

By Mr. Gilligan:

Q. Doctor, I might ask this question: An American Indian who has part negro blood in him would be looked upon as a negro, would he not, with a quarter or an eighth negro blood?

A. That is a very hard question to answer, and I am not sure just how to answer it. I think it would be probably a matter of local opinion. For instance, there are a great many Indians in Oklahoma who have a great deal of negro blood, in varying proportions. It is a subject you don't bring up with them. You have the same prejudices there, and they are usually spoken of as Indians. There is a question of what word you are going to use to denominate them, and it is a rather hard question, too.

Q. Chances are, he would not be honest about it if he had negro blood?

A. You would not ask it. They would say "We are  
225 Indians," and they would be considered in the locality as Indians.

Q. Even though they might be as much as half negro?

A. Yes, that might easily occur.

Mr. Gilligan: That is all.

Mr. Houston: Thank you very much, Dr. Cooper.

(Witness excused.)

Mr. Gilligan: If Your Honor please, inadvertently we did not have this map marked as an exhibit. I would like to have it marked as an exhibit for the plaintiffs, so that it would be a plaintiffs' exhibit.

Mr. Houston: That is No. 1?

Mr. Gilligan: No.

The Court: What is No. 1?

Mr. Gilligan: The civil action that Mr. Urciolo brought.

Mr. Houston: That is 5.

The Court: And you offer it now?

Mr. Gilligan: Yes, sir.

The Court: It may be received.

(The plat previously described and identified by counsel was marked "Plaintiffs' Exhibit No. 5" and by the Court received in evidence.)

Mr. Urciolo: Your Honor, I have here Dr. Parr, from George Washington University medical school, and I think it will be short, as I only have one question and I  
 226 think we may as well dispose of that while we are on the subject.

Mr. Gilligan: It is entirely agreeable to me.  
 The Court: All right.

Whereupon DR. LELAND W. PARR was called as a witness by and on behalf of the defendants and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. State your name, please.

A. My name is Parr, Dr. Leland W. Parr.

Q. You are professor of bacteriology at George Washington University?

A. Bacteriology, at the medical school, George Washington University.

Mr. Urciolo: Is that sufficient qualification?

Mr. Gilligan: Yes, indeed; go ahead.

By Mr. Urciolo:

Q. Dr. Parr, is there any test by which you can ascertain the race to which a group consisting of heterogeneous races, or nationalities belong to, by blood specimens, or otherwise?

A. I don't know of any. Different races vary with the—  
 with respect to different characteristics, but particularly when you limit it to one man, two men, ten men,  
 227 twenty men, I don't know of any such tests.

Q. By blood?

A. By blood. And I checked up on the matter. I don't know of any other tests that fall in the field of medicine, chemical or embryological occurrence of disease, or anything of that sort.

Mr. Urciolo: Thank you, that is all.

Mr. Gilligan: No questions.

## Cross-examination.

By Mr. Houston:

Q. Just a moment, on pigmentation, Doctor. The pigmentation is a matter of—

Mr. Gilligan: Why don't you ask him what it is? Let him answer.

By Mr. Houston:

Q. Doctor, would you explain pigmentation?

A. Well, I can't explain that because I am a bacteriologist. While I am not a physiologist, I will say that we have white negroes, and where we have dark persons without negro blood, pigmentation is an adaptation—I said I could not explain it; I can't, but a protective adaptation—

The Court: Unless you can qualify as an expert of that.

The Witness: Excuse me, sir; that is not my field.

Mr. Houston: That is all.

228 The Court: Thank you, very much, Doctor. You may be excused, I take it?

Mr. Urciolo: Yes, sir.

Mr. Gilligan: Yes.

Mr. Houston: Thank you, Doctor.

Mr. Gilligan: Call Mr. Marchegiani.

Whereupon CONSTANTINO MARCHEGIANI resumed the stand and testified further as follows:

(Direct examination (resumed)).

By Mr. Gilligan:

Q. State your full name, Mr. Marchegiani.

A. Constantino Marchegiani.

Q. Where do you live?

A. On University Park, Colesville Road, 6415 Colesville—

Q. Louder, so we can all hear.

A. University Park, 6415 Colesville Road.

Mr. Houston: 6415 what road?

The Witness: Colesville.

Mr. Houston: C-o-l-e-s-v-i-l-l-e?

The Witness: Yes.

229 By Mr. Gilligan:

Q. Did you ever live on Bryant Street?

A. Why certainly, I lived over there fifteen years.

Q. And at what address?

A. 124.

Q. And when did you move from Bryant Street?

A. On June, I believe, the 5th I believe it was. I don't remember exactly.

Q. What year?

A. Of '45.

Q. Did you sign the two complaints that were filed in this case, one against Mr. Hurd and the other—

A. I certainly did.

Q. And did you know what they contained?

A. Certainly.

Q. What is your color?

A. Well, I expect it to be white.

Q. Expect it to be white?

A. Certainly.

Q. Do you have any negro blood in you?

A. As far as that, I never seen a colored man that I came over here in this country, so I don't know about it.

Q. Never saw a colored man?

A. That is right.

Q. Where do you come from?

230 A. Where I come from?

Q. Where?

A. Italy.

Q. And saw no negroes in Italy?

A. No.

Q. You are a naturalized citizen?

A. Certainly.

Q. And when were you naturalized?

A. 1930.

Q. 1930—do you have your naturalization papers?

A. Yes, sir. (Naturalization certificate passed to counsel.)

Mr. Gilligan: Do you want to look at it?

(Naturalization certificate passed to counsel for defendants.)

Mr. Gilligan: May that be marked Plaintiffs' Exhibit No. 6—or is it 7?

The Clerk: Six.

(Document previously identified as naturalization certificate was marked "Plaintiffs' Exhibit No. 6.")

Mr. Gilligan: Mr. Marchegiani, I think that is all I want to ask.

Cross-examination.

By Mr. Houston:

Q. How old are you, Mr. Marchegiani—just a moment; it will be on that.

Mr. Houston: Let me see that (examining Plaintiff's Exhibit-No. 6).

By Mr. Houston:

Q. You were twenty-seven in 1930; you are forty-two now?

A. That is right.

Q. Born in what province?

A. Northeast of Rome, that is Province of Pescara.

Mr. Gilligan: Would you mind letting me ask a question that I should have before?

What is your business?

The Witness: I work for Capital Transit, mechanic.

The Court: Capital Transit?

Mr. Houston: As a mechanic?

The Witness: Yes.

Mr. Houston: Do you and your wife still own 124 Bryant Street, Northwest?

The Witness: Yes.

Mr. Gilligan: How is it occupied, if at all?

The Witness: By white people.

Mr. Gilligan: White?

The Witness: Yes.

Mr. Gilligan: And they have been put in since you have moved away?

The Witness: Yes.

By Mr. Houston:

Q. Who are the tenants?

A. Tenants?

Q. Yes; who are they?

A. I don't know their names.

Q. All right. Who rented it; who is your agent?

A. G. H. Lallagher.

Q. How do you spell it?

Mr. Gilligan: May I spell it?

By Mr. Houston:

Q. Show how you spell it; I will let you write it.

A. I can write but I can't spell it.

Q. You write it (passing blank paper to witness who wrote thereon "L-a-l-l-a-g-h-e-r").

Mr. Houston: I would like to have this marked as Defendants' Exhibit No. 1.

(The paper writing of the witness Marchegiani was marked "Defendants' Exhibit No. 1, Marchegiani," and by the Court received in evidence.)

By Mr. Houston:

Q. Where is his office?

A. 1510 I believe.

Q. Where?

A. 1510 H Street; No. 1410 H Street.

233 Q. He is in the real estate business?

A. That is right.

Q. This is a matter of identification. I am trying to—

A. (Interposing.) Yes, that is right.

Q. Now, at the time that you moved into your house, 124 Bryant Street, did you have gas or electricity?

A. I had both.

Q. You mean you had gas for heating purposes, too?

A. No, I had for cooking.

Q. What kind of heat did you have?

A. Please explain.

Q. What kind of heat did you have?

A. It was hot air.

Q. Old furnace or new?

A. Well, it was old.

Q. And how many rooms in the house?

A. Let's see,—seven.

Q. A row house?

A. Yes.

Q. Now, that house you are living in now, is it a new house or an old house?

A. Oh, it is practically a new house.

Q. Is it detached or row?

A. Detached.

Q. What kind of heat does it have?

234 A. Heat?

Q. Yes.

A. Hot water—oil.

Q. Hot water and oil?

A. Yes.

Q. Now, this hot air, is that coal or what?

A. Coal.

Q. How much yard do you have? How large is your lot out there?

A. Where I am now?

Q. Yes.

Mr. Gilligan: What difference does it make, if Your Honor please, what his lot is where he is now?

The Witness: I can't understand.

Mr. Houston: All right. I want to find out just exactly why he moved and whether he wants to come back, what his interest is in moving, and in having the covenant enforced. I think that is all material.

The Court: The objection is sustained.

Mr. Houston: All right. Let me then make the tender that it is our position to explain to the Court—it is our position that it is part of the defense, I mean part that has been opened on cross examination, that the comparison of the two houses for any purpose is material to the case, on appreciation, or anything else, and that on the matter

235 of enforcement of the covenant again; in other words, my basic position is this—one of my basic positions, I should say—is this: that a court of equity will not enforce a covenant for spite, that it will enforce a covenant only by the special remedy of injunction when the benefit to the plaintiff outweighs the hardships to the defendant, and that in this situation—certainly so far as this

plaintiff is concerned—he is not able to show any detriment and that therefore when we go on and put in our own case, that then we will be able to show him and say on the balance of equity, the equities are greater on our side and for that reason ask the Court to refrain from issuing an injunction.

May I ask again for Your Honor's ruling?

The Court: The objection is sustained.

By Mr. Houston:

Q. Now, Mr. Marchegiani, during the time that you were living in 124 Bryant Street, did you have any difficulty with the negroes living in the square?

A. No, sir.

Q. And you did not have a prejudice against negroes before you came to this country, did you?

A. I don't know it, because I never seen one.

Q. The answer then is no.

A. Yes.

Q. Now, Mr. Marchegiani, how do you know you are white?

236 A. Well, how do I know I am white? I never seen one colored over where I come from.

Q. You have seen plenty of dark Italians, haven't you?

A. No.

Q. What?

A. Not where I come from, not.

Q. Don't the Italian people move about from place to place? They don't stay in one place all the time?

A. Oh, yes, they stay on the place where they belong to.

Q. You mean to say that a man in Naples never goes up and settles north of Rome in Pescara?

A. No.

Q. Never does?

A. If goes on business, but goes back same place where he stays.

Q. Never moves up there?

A. Unless like going to work over there, something like that; but still going back to his own place.

Q. Why did you leave, if Italians never leave?

A. I was anxious to go see other countries.

Q. What?

A. Anxious to go see some other country.

Q. Do you think other Italians might be anxious to see some other countries, see and settle some place else?

A. That is not my business.

237 Q. How many of your ancestors have you actually seen?

A. Three of them.

Q. And they are who?

A. My father, grandfather and great-grandfather.

Q. What side?

A. Both sides.

Q. How many grandfathers, great-grandfathers, did you have?

A. One.

Q. You mean you only had one great-grandfather?

A. What I saw.

Q. You don't know the color of the others?

A. Well, I saw what I saw was white, outside that I couldn't answer.

Q. You don't know?

A. That is right.

Q. All right.

Mr. Houston: I have no further questions. I shall recall this witness later as a matter of defense.

Mr. Gilligan: I would like to ask one question in view of the questions asked by Mr. Houston.

Have you finished?

The Court: In view of what—

Mr. Gilligan: If your Honor please, what I am—

238 The Court (continuing): —what was said yesterday, I wanted to indicate that you must complete your cross examination now.

Mr. Houston: Your Honor, you have just told me—I am not calling him for cross.

The Court: You may call him as your own witness.

Mr. Houston: That is all, Your Honor.

The Court: That is not a recall.

Mr. Houston: I see.

Let me explain my point. As I understand it, Mr. Marchegiani, Mr. Giancola and Mr. DeRita are contractors. So far as I am concerned, I am trying to accommodate them so they can be relieved and not have to continue sitting here and I am willing to tell Mr. Gilligan when it will be necessary to bring them back. It is a question of not needing—

The Court (Interposing): The Court will require them to stay here if you indicate that you are going to call them.

Mr. Houston: I don't want them to have to stay—

The Court: The Court will require them to stay.

Mr. Gilligan: After they finished this morning, they can be excused for the rest of the day, can they not?

Cross-examination.

By Mr. Urciolo:

Q. Mr. Marchegiani, from what town did you come from?

A. Alicia.

Q. How many people in that town?

239 A. Well, I don't know.

Mr. Gilligan: If Your Honor please, I hate to keep objecting; but they keep piling up and piling up irrelevant evidence.

The Court: Sustained.

Mr. Urciolo: The reason for asking that question, Your Honor, is that he stated that he was from northeast of Rome, in Pascara, and then he stated that he had never seen a negro. Now, consequently, if he comes from a town of about 200 persons, the chances are that he never has seen a negro—

The Court: The objection is sustained.

By Mr. Urciolo:

Q. Mr. Marchegiani, how much rent do you get for your house?

A. \$95.

Q. Is that approved by the Rent Control?

A. Well, I could not tell you about that; that is the agency have taken care of it.

Q. You don't know?

The Court: He said he didn't know.

The Witness: I told you—don't know.

Mr. Urciolo: Sorry; I thought he said the agent.

By Mr. Urciolo:

Q. How much did you pay for your house?

Mr. Gilligan: What house?

240 Mr. Urciolo: The house on Bryant Street.

The Witness: \$4.950.

By Mr. Urciolo:

Q. How much?

A. \$4,950.

Q. \$4,950?

A. That is right.

The Court: Don't repeat his answers.

Mr. Urciolo: I can't understand him.

Mr. Gilligan: Come closer.

The Witness: Come closer, you can hear me.

By Mr. Urciolo:

Q. How much would you take for your house today?

A. Well, I take—it is hard to say—I didn't figure it up yet.

Q. Would you take \$10,000?

A. Might be so, might be not.

Q. Then, Mr. Marchegiani, why do you state in your complaint when you say you read it and understand it, that the "presence of negroes will highly depreciate" your property?

A. I am the only defendant—the covenant of the property?

Mr. Houston: I didn't understand that.

Mr. Urciolo: The answer is not responsive, Your Honor.

The Court: Read the question again.

241 (Record read by the reporter.)

Mr. Houston: May I understand the answer; may I hear the answer?

The Court: What?

Mr. Houston: I did not hear the answer, before the question.

The Court: Read the question and the answer again.

(Record read by the reporter.)

By Mr. Urciolo:

Q. In other words, then, in your complaint, when you stated that the presence of negroes would be highly depreciative of your property and would be ruinous of the price, you did not mean that?

A. I couldn't answer about that.

Q. Well, you know whether you did or not.

A. I didn't understand you correctly the way you put that words.

Q. In the complaint—

A. Yes.

Q. —for an injunction to make the negroes move—

A. That is right.

Q. The so-called negroes move—you stated that because negroes had moved in the block, their presence had depreciated and lowered the price of your property, and it would be ruinous of your property interests. What did you mean by that?

242 Mr. Gilligan: I object because that is not what he said at all, moving into a block—

Mr. Urciolo: Let's read it.

Mr. Gilligan: If you say what you mean. He said "into the block."

By Mr. Urciolo:

Q. I am reading from paragraph 10 of the allegation—have you read this?

A. Yes, I read it.

Q. Did understand it?

A. What I could understand—what I couldn't understand, my wife explained to me.

Q. "Plaintiffs aver that the above-mentioned and described deeds of Lots 113, 114, 136, Square 3125 to the respective negro defendants are a nullity and of no effect and said deeds and conveyances confer no property rights upon said defendants; that the contemplated occupancy of such property by negro defendants as well as to permit the deeds and conveyances to remain a matter of record would be injurious, depreciative and absolutely ruinous of the real estate owned by the plaintiff."

Now, what did you mean by that, Mr. Marchegiani?

A. Yes.

Mr. Urciolo: Your Honor, again we ask for an interpreter.

The Court: Can you explain what it means?

243 The Witness: Still I could not explain myself the way he read it.

Mr. Urciolo: I am only reading what you signed (addressing the witness).

Mr. Houston: Let him read it.

By Mr. Urciolo:

Q. Do you want to read it (passing copy of complaint to the witness):

Paragraph 10, from here to here (indicating).

A. That is for depreciation, yes.

Q. What did you mean by it? Did you mean—

Mr. Houston: Just ask him.

Mr. Gilligan: He said he meant depreciation.

The Witness: I did answer, it is for depreciation.

By Mr. Urciolo:

Q. Explain yourself.

A. The property depreciation, just as that paper meant.

Q. In other words, your property because of the presence of negroes, is now worth less than if it were completely white?

A. It would.

Q. It would?

A. That is right.

Q. Then why, Mr. Marchegiani, may I ask you, when I asked you if you would take \$10,000 for the property, I am taking it for granted you recall you said you paid 244 \$4,950, and you said you don't know whether you would sell or not?

A. Well, it is—I paid \$4,950, but it cost me double for remodelling.

Q. Then it cost you, say, \$10,000 to remodel.

A. Cost about that much more than that I paid to remodel it.

Q. Again I ask you then, would you take \$12,000 for your property?

The Witness: Do I have to answer that question, Your Honor?

The Court: Not unless you want to say that you would.

By Mr. Urciolo:

Q. Answer it yes or no.

A. No.

Q. You would not take \$12,000?

A. I don't say whether I take it or not.

Q. In other words, you refuse to answer?

A. That is right.

The Court: He does not have to fix a value on it now, that he would sell it for.

Mr. Gilligan: There are so many angles to it, if Your Honor please. The question is whether the negroes are going to stay, whether they are out, all this enters into that type of question.

Mr. Urciolo: My questioning is directed to paragraph 10 of the allegation, that it is ruinous. I will ask him to please explain in what manner it is ruinous.

By Mr. Urciolo:

Q. In what manner is it ruinous, Mr. Marchegiani?

The Court: He just answered that—on account of the depreciation of the property.

By Mr. Urciolo:

Q. Then, he was asked in what way does it depreciate it.

A. Which way is depreciate it?

Q. Yes.

A. In every way.

Q. Well, which way?

Mr. Gilligan: He said "In every way".

Mr. Houston: Yes, he means to say we are entitled to probe it, if Your Honor please.

The Court: Wait a minute.

By Mr. Urciolo:

Q. What do you mean "In every way"? Give us two ways, five ways.

A. Suppose, you know, you sell, I say about six house to colored, is that correct? and I want to sell my house afterward, how much would I get for it?

Mr. Gilligan: That is his answer.

The Witness: That is the question.

By Mr. Urciolo:

Q. Well, the question is would you get more or less?

246 A. I would get less.

Q. You would get less?

A. That is right.

Q. Have you tried?

A. I don't have to try.

Q. What makes you think you would get less?

A. I know.

Q. How do you know it? Have you inquired as to what the negroes have paid for the house? How do you come to your conclusion?

A. I seen a different case.

Q. For example?

A. On a different place that, after the colored move in, that the property depreciated.

Q. Which case? Give me one case.

A. I can't recall all the case.

Q. In fact, you don't know of any case.

A. Well, might be not, but that is my answer.

Q. Mr. Marchegiani, would you object to Ethiopians moving into the block?

A. On the deeds which I recall it last night, said "Negro or colored", which I believe.

Q. You are not answering the question.

Mr. Gilligan: Wait a minute. He is answering.

247 The Witness: Which I believe is all the race outside white.

By Mr. Urciolo:

Q. Is that your interpretation?

A. That is right.

Q. May I read the covenant to you?

A. Go ahead and read it.

Q. Suppose I let you read it.

A. You read it out loud.

Q. "Subject also to the covenant that said lot shall never be rented——"

Excuse me, Your Honor.

By Mr. Urciolo:

Q. You said you read it last night?

The Court: Go ahead and read it.

Mr. Houston: Your Honor, may I offer an objection to forcing the counsel to read that, in view of the fact that this witness, he had first requested the witness to read it himself?

The Court: What is your objection?

Mr. Houston: My objection.

The Court: Yes.

Mr. Houston: My objection is the question of proving—

The Court: This counsel has the witness now.

Mr. Houston: I have the right to take advantage of anything brought out in the trial, so far as my defendants are concerned, so that I am saying that the line of examination that he has followed shows that he didn't have the slightest conception whatsoever of what he was doing and therefore I would like to insist—

The Court: The objection is overruled.

Mr. Houston: I take an exception to Your Honor's forcing counsel to read.

The Court: I understand that.

Mr. Urciolo (Continuing): "Subject also to covenant that said lot shall never be rented, leased, sold, transferred or conveyed unto any negro or colored person under a penalty of \$2,000 which shall be a lien against said property."

By Mr. Urciolo:

Q. In view of what I read, do you modify your answer, Mr. Marchegiani?

A. That said "negro or colored race" persons.

Q. Please answer the question, Mr. Marchegiani.

A. I said negroes, colored persons.

Q. I think that calls for a yes or no answer. You can explain or expatiate thereafter.

A. Colored person mean—

Mr. Urciolo: Your Honor, this witness is not responsive.

The Court: What is your question?

Mr. Urciolo: My question was—having heard this covenant read to you, do you modify your previous answer.

The Witness: I didn't understand you yet.

Mr. Urciolo: I am sorry, your Honor; there is no way I can make him understand.

The Court: I can't understand, either.

Mr. Urciolo: This very man, Your Honor, explained a few minutes ago that he understood the covenant to mean that no one could occupy the premises except white people.

The Witness: That is right.

Mr. Urciolo: Then, I read the covenant to him and asked him did he modify his answer, would he now modify his answer in view of having read the covenant to him.

Mr. Gilligan: You used the word "change" instead of "modify".

The Court: Do you change your answer or not?

By Mr. Urciolo:

Q. Do you change your answer now?

The Witness: I cannot understand yet.

Mr. Urciolo: I protest, Your Honor. We cannot proceed in this fashion without an interpreter. There will be others, in a worse situation.

The Court: He doesn't need an interpreter. Ask him again what he thinks the covenant means.

By Mr. Urciolo:

Q. What does this covenant mean, Mr. Marchegiani?

250 A. That mean strictly whites.

Mr. Gilligan: Isn't that a responsive answer?

Mr. Urciolo: Yes, Your Honor.

The Court: Well, what is the next question?

Mr. Urciolo: I have no next question, Your Honor. My point at this stage of the game is that if that is what he means by it, he doesn't understand the English language and therefore—

The Court: That is for argument later.

Mr. Urciolo: Now, at this time, Your Honor, if I may, I would like to make a motion that his name be stricken as a plaintiff because by his answers I think I have definitely established that he does not understand what he has signed.

The Court: The objection is overruled and the motion is denied.

Mr. Urciolo: No further questions.

Mr. Gilligan: That is all.

Mr. Houston: If Your Honor please, there are two points that were brought out, new points, in the cross examination. The Court: You may question.

Further cross-examination.

By Mr. Houston:

Q. Mr. Marchegiani, have you dealt in real estate very much?

A. What the ones that hold the house now.

251 Q. No, have you bought and sold very many houses?

A. No.

Q. How many houses have you bought and sold?

A. Just bought two of them and that is all. I ain't sold none.

Q. Bought that one at 124 which you now own?

A. That is right.

Q. Then bought the one you now live in?

A. That is right.

Q. You don't set yourself up as a real estate expert, do you?

A. No, I won't say not.

Q. The second question: You testified on cross-examination that you read the deed last night and the covenant.

A. I went over last night again 'cause I knew what was in it but to make sure of it, them two words, that I went over again.

Q. All right. Now, tell me, when did you first know about the covenant?

A. When I first bought it.

Q. Now, did you conduct the negotiations or did Mrs. Marchegiani conduct the negotiations?

A. Well, she conducted most of them.

Q. Did you go on to the property and look at the house before you bought it, or did she?

252 A. I went with her.

Q. Now, at that time, did you know of negroes living in Bryant Street at 154, down to Second?

A. Well, not right at present, but then somebody that told me that they were.

Q. You didn't know that at the time you first went to look at the house, is that correct?

A. That is right.

Q. When did you first learn or when did you first know that negroes lived in Bryant Street from 154 down to Second Street, was it before you bought your house or afterwards?

A. Before.

Q. Before you bought your house?

A. That is right.

Q. Then you bought your house knowing that out of, say, 30-some properties in the square, 11 were already occupied by negroes?

A. That is right.

Q. Did you make any inquiry to find out whether the negroes owned their houses or were just renting?

A. Yes.

Q. What did you find out?

A. Owning.

Q. Found out that they were owning?

253

A. That is right.

Q. Now, when did you first find out about the covenant on your house?

A. That was about the same time because I was looking around, because it was colored all over it, and I see that there wasn't in there.

Q. Right back of your house at the time you bought were colored people living back of your house that you bought?

A. Yes.

Q. Now, Mr. Marchegiani, who told you about the covenant? Did you find out first at the title company?

A. I find out from a young fellow over next door, the way it was situated, and then I went to the title.

Q. Who was the young fellow next door?

A. Morris Lanigan.

Q. Can you just say that again?

Mr. Gilligan: Morris-Lanigan.

By Mr. Houston:

Q. Morris Lanigan?

A. Yes.

Q. When did he tell you?

A. He told me that from 154 down, it was occupied by negroes and can't come any further than that, that where they come, the way it is writ.

254 Q. And he told you that before you bought your property?

A. That is right.

Q. And you bought with full knowledge?

A. That is right.

Mr. Houston: I have no further questions.

Mr. Gilligan: That is all.

Mr. Houston: That is all.

Mr. Gilligan: The Court wants you to stay. May he be excused until one-thirty?

Mr. Houston: My thought is, Your Honor, I will be perfectly willing, I want to accommodate these people, and I am perfectly willing to put my own persons on the stand first, after you close your case and I think, frankly, we will go on all day on this.

Mr. Gilligan: We won't be—

The Court: He may be excused until one-thirty.

Mr. Gilligan: You may be excused until one-thirty.

Mr. Marchegiani: No use in that.

(Witness steps down.)

Mr. Gilligan: Call Mrs. Marchegiani.

Whereupon MARY M. MARCHEGIANI was called as a witness by and on behalf of the Plaintiffs, and, having been first duly sworn, was examined and testified as follows:

255 Direct examination.

By Mr. Gilligan:

Q. State your full name, Mrs. Marchegiani.

A. Mary Marchegiani.

Q. You heard your husband testify as to living in Maryland?

A. I did.

Q. And owning 124 Bryant Street?

A. Right.

Q. And you still own it?

A. Yes.

Q. And what rent do you get for it?

A. \$95.

Q. And has the matter been taken up with the Rent Control Board?

A. On file with the Rent Control Board by Mr. Lallagher.

Yes.

Q. You are a party plaintiff in this case, are you not?

A. Yes.

Q. You signed both complaints?

A. I did.

Q. At the time you bought the house, did you make any investigation regarding whether or not colored people or negroes could occupy houses in there?

256 A. We did. We had quite a while to decide it in because the house was empty and we went to see it three or four times before we decided to buy it and one of those times we were out in the back yard and Morris Lani-gan was in the back yard and we inquired through him how the situation was and he told us that they couldn't come up any further, just the last ten houses were the only ones that were occupied, that they couldn't go up any further.

Q. Couldn't come any closer to you?

A. Couldn't come any closer, and when we went to the title office they told us the same thing and also the man we bought it from.

Q. Did that have any bearing on your reason for buying?

A. Yes, that was my reason.

Mr. Gilligan: I think that is all.

Cross-examination.

By Mr. Houston:

Q. Now, Mrs. Marchegiani, at the time you moved in there were negroes in 154 down to Second Street?

A: There were.

Q. And negroes directly back of you?

A. Mixed.

Q. Now, in 1930 on Adams Street, back of you, were negroes all down that square?

257 A. Well, I am not sure, but I think there were still some white families, but I didn't inquire. After we moved in, I found out that there was still some white families.

Q. Did you inquire at all as to whether the covenant covered any houses other than the houses on Bryant Street?

A. Well, I was not interested in any other place.

Q. Not interested in any house except on Bryant Street?

A. Where I was moving to.

Q. And this \$95 per month, how many rooms in your house?

A. Seven rooms—two apartments.

Q. Two apartments?

A. Yes.

Q. Two complete apartments?

A. Well, a sink and stove, upstairs.

Q. Sink and stove?

A. And only one entrance.

Q. Wait a minute, stove upstairs, and how many baths?

A. One.

Q. Now, have you had just one tenant in there since you rented the place?

A. Yes.

Q. That tenant didn't object to moving in on account of the fact that negroes were there, did he?

258 A. At the time I rented it, there was only one family, 116, already in.

Q. All right, did that tenant object to moving?

A. I never met the tenant.

Q. So far, he has never objected,—to you?

A. I never spoke to him at all.

Q. Did anybody ever report to you that he objected?

A. I told Mr. Lallagher to explain the situation on the block.

Q. I said, did anybody ever report to you that the tenant objected to the presence of negroes?

A. No.

Q. Has the tenant ever since reported to you, have you had any report from the tenant since that time?

A. I have not—

Q. Just a moment, have you had any report from the tenant since that time as to objection because more negroes were moving in?

A. No.

Mr. Houston: That is all.

Mr. Urciolo: No questions.

Mr. Gilligan: That is all, Mrs. Marchegiani, thank you.

(Witness steps down.)

Mr. Gilligan: Call Mrs. DeRita.

If Your Honor please, Mr. Houston just asked  
259 about Mrs. Marchegiani's place of birth. I will  
be happy to establish that.

Mrs. Marchegiani, are you native-born?

Mrs. Marchegiani: That is, naturalized.

Mr. Gilligan: Do you have your naturalization papers?

Mr. Marchegiani: Yes.

Mr. Gilligan: When were you naturalized?

The Court: Ask Mrs. DeRita to step down.

Come back, Mrs. Marchegiani.

Whereupon, MARY M. MARCHEGIANI resumed the stand  
and testified further as follows:

Redirect examination.

By Mr. Gilligan:

Q. When were you naturalized?

A. I don't remember exactly, but I think it was in 1939.

Q. 1939?

A. Not positive.

Q. When did you first come to the United States?

A. About 33 years ago.

Q. 33 years ago?

A. Yes, I was very small.

Q. Do you remember where you came from?

A. No, I don't. I was only about five or six years  
260 old.

Q. You came from Italy, I presume?

A. I presume so.

Q. Otherwise, you don't know?

A. Yes—don't know.

Q. What color are you?

A. White.

Recross examination.

By Mr. Houston:

Q. Where were you born, Mrs. Marchegiani?

A. Italy.

Q. Italy,—what province?

A. I am not positive, Deramo.

Q. And how many of your ancestors have you seen?

A. Just my mother and father, the rest died when I was very small.

Mr. Houston: I have no further questions. Are you going to introduce that (referring to naturalization certificate)?

Mr. Gilligan: I would like to have this as Plaintiff's Exhibit No. 6.

(Said Naturalization Certificate of Mary M. Marchegiani was marked "Plaintiffs' Exhibit No. 6," and received in evidence.)

261 Recross-examination.

By Mr. Urciolo:

Q. Mrs. Marchegiani, you heard Mr. Marchegiani testify that you explained to him—

A. I did.

Q. —the meaning of this covenant?

A. I think if you had explained depreciation, he would have understood it.

Q. Reducing in value of the house so that it won't pay so much.

A. You didn't say that, you were told yesterday that they couldn't understand good English.

Q. I asked that he get an interpreter.

The Court: Answer the question.

The Witness: With plainer language he would have understood you.

By Mr. Urciolo:

Q. Mrs. Marchegiani, is the explanation that Mr. Marchegiani gave of this covenant the one that you gave him?

A. The explanation of the covenant is that we —

Q. Answer the question, please. The question is, Is the explanation that he gave the one that you gave him?

A. No, that is his own explanation.

Q. In other words, he didn't understand you?

A. He understood when I told him.

262 Mr. Urciolo: No further questions.

Mr. Gilligan: That is all.

The Court: You may step down.

(Witness stands aside.)

Whereupon, VICTORIA DeRITA was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Mrs. DeRita, state to the Court here, don't get excited—

Mr. Urciolo: Excuse me, Your Honor. Before we start, I move at this point that the name of Mr. Marchegiani be stricken as a plaintiff.

He did not understand this complaint.

The Court: The motion is overruled.

By Mr. Gilligan:

Q. Will you state your name?

A. Victoria DeRita.

Q. And where do you live?

A. 128 Bryant Street, N. W.

Q. And do you and your husband own the house together?

A. Yes, sir.

263 Q. When did you buy that house?

A. 1940.

Q. 1940.

A. That is right.

Q. Have you lived there ever since?

A. Yes, sir.

Q. Are you a naturalized citizen?

A. Applicant, just waiting for my citizen paper any day.

Q. Applicant now?

A. Yes.

Q. Born in Italy?

A. Yes, sir.

Q. When did you come to the United States?

A. 1935.

Q. 1935?

A. Yes, sir.

Q. What is your color?

A. White.

Q. Are you sure of that?

A. Yes, indeed.

Q. Did you sign the two bills of complaint which we filed in these cases?

A. Yes.

264 Q. Did you know what they contained?

A. Yes.

Q. How did you know?

A. Because Mrs. Hodge and Mrs. Giancola told me.

Q. Explained them to you?

A. Yes.

Q. When you were getting ready to buy your house did you make any inquiry as to whether there was any covenant as to negroes?

A. Yes.

Q. Just tell the Court what your inquiry was, what did you do?

A. Yes.

Q. I say, What inquiry did you make—through what?

A. Mrs. Giancola.

Mr. Houston: Who?

The Witness: Mrs. Giancola, she explained to me what I have to do myself.

By Mr. Gilligan:

Q. Did she explain to you about the deed covenant?

A. Yes.

Q. Did you know that there were any negroes living in the block at the time you bought?

A. Well, the negro lives in 154 all way down, 152 all way up, all way white.

Mr. Gilligan: I think that is all, if Your Honor please.

265 Cross-examination.

By Mr. Houston:

Q. Mrs. DeRita, do you read and write English?

A. Nope.

Q. How many times did you sign papers?

A. Two time.

Q. Where were you the first time?

A. Well, I can't remember the date.

Q. No, what time, night or day time, was it?

A. Night time.

Q. Where were you and who was present?

A. Mrs. Hodge.

Q. Who else?

A. Mr. Gilligan.

Q. Who else?

A. All the rest that come in this Court, Mrs. Marchegiani, Mr. Marchegiani, Mr. Giancola, Mrs. Giancola, Mrs.——

Q. And the second time?

A. Second time, Mrs. Hodge come to my house.

Q. Now, did she read the paper to you?

A. She explain it to me, yes.

Q. Do you remember testifying on the deposition?

A. Sure.

Q. Remember testifying over at Mr. Middlemiss' office?

266 A. Yes.

Q. Well, now, I will read this to you, see if you remember it.

Mr. Gilligan: Read it slowly so she can get it.

Mr. Houston: Sure. Ready, Mr. Gilligan?

Mr. Gilligan: Yes.

By Mr. Houston:

Q. I start back, Mrs. DeRita, a little bit so that you may familiarize yourself with the thing, in other words, I will start a little bit further back, understand?

A. Yes.

Q. I asked you this question? (Reading)

"Will you take a pencil and write your name now on this piece of paper?"

And you said, "Sure."

And I said, "I ask that this be marked as 'De Rita Exhibit No. 3'."

And I said, "And you say—" and you interrupted me, you said, "Well, I signed one paper."

A. I signed two papers, not one.

Mr. Gilligan: He is reading.

By Mr. Houston:

Q. (Continuing):—"Well, I signed one paper. I do not know whether I signed this one or that one, but I signed a paper."

267. "Question: Where did you sign that paper?"

And you asked me, "What do you mean?" Then, I asked you, "Where were you when you signed that paper—whose house?"

And you said, "My house; my home."

A. That is right.

Q. I said, "In your home?" You said, "Yes. Sure."

I said, "Who was there?"

Then there was an aside.

Mr. Gilligan: I will leave it to you—

Mr. Houston: All right.

By Mr. Houston:

Q. Then you said, "Mrs. Hodge." And I said, "Mrs. Hodge?" And you said, "That is right."

I said, "Who else?"

You said back to me, "Who else?"

I said, "Anybody but Mrs. Hodge—who else was there?"

And you said, "Mrs. Hodge."

A. That is right.

Q. I said, "Nobody but Mrs. Hodge—are you sure?"

And you said, "That is right."

Then I asked, "What did Mrs. Hodge say or do before you signed that paper?"

You said, "Well, she say I have to sign. That is all. I am supposed to sign. Any time I sign it."

268. A. And—and—

Q. You say you didn't say that?

A. I say I have to sign the paper because the negroes can't move before the kids come.

Q. Did you say this?

A. I say that, now I don't know what you say there.

Q. I said, "So you just signed that?"

You said, "That is right."

A. That is right.

Q. I said, "How long was Mrs. Hodge at your house at the time you signed that paper?"

And you said, "What do you mean, how long?"

I said, "How long did she stay there?"

And you said, "Well, she no stay all night; just I sign and she go home."

A. That is right.

Q. I said, "She just walked in and said, 'Please sign the paper' and walked home?"

And you said, "That is right."

Then I asked you, "How many pages were on the paper?"

You said, "I no count."

A. That is right.

Q. "Did Mrs. Hodge tell you?"

"Answer: Well, I pay no attention. I just sign my name.

That is all."

269 And then I said, "I say: 'Did she tell you?' And then you said, 'No. She tell I have to sign. I sign.'"

Then I asked, "That is all she said?"

And you said, "That is right."

And then I asked, "Did she explain to you what that paper was?"

And your answer was, "Well, I no tell anything, but Mrs. Hodge, she bring the paper. I sign it. She have to go. She has to start to cook. I have to cook, too, for my husband. I have no time to talk."

A. That is right.

Q. Then I said, "I see: Fine."

Now, is that a correct statement as to how you testified on your deposition?

A. Well, I understand what you say now. You say it again.

Q. Is that, what I have read to you, correct as to what you said over there at Mr. Middlemiss' office?

A. That is right.

Q. What did you pay for your house, Mrs. DeRita?

A. \$5200.

Q. And when did you move in?

A. 1941.

Q. You paid \$5200?

A. That is right.

270 Q. And moved in in 1941 or '42?

A. '41.

Q. At that time, were there negroes living behind you on Adams Street?

A. Yes.

Q. Now, do you have your first papers with you?

A. No.

Mr. Houston: I think we called for those. Will you ask about them?

Mr. Gilligan: Well. Do you have them at home?

The Witness: What, Mr. Gilligan?

Mr. Gilligan: The first papers.

The Witness: No, because my husband is a citizen. I wait for the full papers, no first one.

By Mr. Houston:

Q. Have you up to the present time made an application for citizenship?

A. Yes.

Q. When?

A. I can't explain,—March—I don't know.

Mr. Gilligan: You say in March?

The Witness: March.

The Court: Of this year?

The Witness: Yes, sir.

271 By Mr. Houston:

Q. March of this year in this Court?

A. That is right,—in the school.

Q. Did you come to this building?

A. I go to school, I come to pay over here.

Q. You went to Webster School?

A. That is right,—Nathaniel.

Q. 10th and H Streets, N. W.?

A. That is right.

Q. Americanization?

A. That is right.

Q. Did you go to the Americanization school there?

A. Yes.

Q. When did you go to the Americanization school?

A. What do you mean—that, you say again, please?

Q. Yes. Have you been going to classes?

A. Yes.

Q. Where?

A. In the school.

Q. That is down at the Webster School at the same place you made your application?

A. That is right.

Q. That is down at 10th and H Streets?

A. Yes.

272 Q. When did you go to school, when did you begin going to school?

A. I can't understand that.

Q. When did you begin going to school?

A. I can't catch.

The Court: When was the first time you went to the school?

The Witness: Well, the first time, the day before I go put in application, that night go to school.

By Mr. Houston:

Q. Now, are you still going to school?

A. Not yet.

Q. How many times have you been to school?

A. Well, I go three months.

Q. Have you started?

A. No, I finish my school.

Q. You have already finished?

A. That is all. I just finish, no go no more.

Q. You have been going three months?

A. Yes.

Q. Now, how old are you, Mrs. DeRita?

A. 54.

Q. You came to the United States in '35, and your province is what, in Italy, where were you born?

A. Italy.

Q. Did you have any prejudice against negroes before you came to the United States?

273- A. I can't catch.

Q. You mean you don't understand what I am saying?

A. No.

Q. Did you have any prejudice, you understand "prejudice"?

A. Yes.

Q. Against negroes before you came to the United States?

A. Well, before I no see the negro, I just see them Washington, D. C.

Q. So the answer is no.

A. No.

Q. Have you had any trouble with negroes on Bryant Street?

A. No.

Q. Now, at the time that you moved in, you had heat and electricity?

A. Yes.

Q. Gas for cooking?

A. That is right.

Q. What kind of heat?

A. Coal.

Q. Hot air or steam or what?

A. Steam.

Q. Steam heat?

274 A. Radiator.

Mr. Houston: I think that is all—just a minute.

By Mr. Houston:

Q. At the time when you first moved in, did negroes live all up and down in back of you on Adams Street, or were there white families back of you on Adams Street?

A. The negroes live on the back.

Q. All right. Now, on Adams Street between First and Second—

A. That is right.

Q. You understand?

A. Yes.

Q. Very many negroes moved in there since the time you moved in?

A. Well, I no see nobody.

Q. You don't see anybody move in?

A. No.

Q. Just let me make sure you understand.

A. Yes, I can understand what you say.

Q. All right. Did you make any inquiry—strike that. Did Mr. Gilligan tell you that the same covenant that is on your house is also on First Street and on Adams Street?

A. No.

Mr. Houston: All right, no further questions at this time.

275 Cross-examination.

By Mr. Urciolo:

Q. Mrs. DeRita, you say you don't read English?

A. That is right.

Q. You don't write English?

A. No.

Q. Do you read any language?

A. Italiano.

Q. How much schooling did you have in Italy?

A. You supposed to say that?

Q. Ask the Judge.

The Witness (Addressing the Court): I have to say?

The Court: Yes.

The Witness: Five years.

By Mr. Urciolo:

Q. Five years?

A. Yes.

Q. Now, did you read this (indicating copy of complaint) or did you not read this before you signed it?

A. Well, I no read myself, somebody else read for me, then explain what it says.

Q. Who read it for you?

A. Mrs. Hodge.

Q. Mrs. Hodge?

A. That is right.

276 Q. Well, did she explain to you that it stated here (indicating) that defendants are citizens of the United States?

A. Yes.

Q. She did explain it to you?

A. Yes, she explained everything.

Q. And you signed it?

A. That is right.

Q. Even knowing that you were not a citizen?

A. That is right.

Q. Tell me, Mrs. DeRita, why did you sign it, knowing that you were not a citizen, and yet you say you understood that, you said you were a citizen?

A. No, I no be a citizen because I no got my paper yet; I signed because I want protect my property.

Q. I know, but paragraph 2 of this complaint states here that you are a citizen.

A. No, I no say that, I no say I no citizen.

Q. In other words, you know, don't you—

A. I can understand, I am not a citizen yet.

Q. I am stating to you, Mrs. DeRita, this paper says that the plaintiffs, that means the people who are suing to put the negroes out, that they are citizens. Now, you say you

understood it, yet now my question is—understanding that this paper stated, alleged, that you, that the plaintiffs, the people who are suing, are citizens and you, knowing that you are not a citizen, why did you still sign that?

A. I sign because it is my property, outside, my husband is a citizen, which we buy together, I buy it together, me and my husband together, I am supposed to decide.

Mr. Urciolo: The answer is not responsive. I again make a move that this plaintiff be stricken as plaintiff, because it seems quite clear that these poor—

The Court: The motion is overruled.

Mr. Urciolo: If Your Honor please, I have not even stated my reason.

The Court: Yes.

Mr. Urciolo: My reason is that these poor people have no more intentions of signing, bringing any such allegation, that they were morally forced and coerced by Mrs. Hodge, they haven't any idea what they were signing or what they had said or what it was for.

The Court: The motion is overruled.

Mr. Urciolo: That is all.

Mr. Houston: There was something, Your Honor will recall I just got the deposition this morning at the trial and Mr. Middlemiss has just put it on the desk and I wanted to ask about this (indicating).

278 Further cross-examination.

By Mr. Houston:

Q. Mrs. DeRita, do you visit Mrs. Hodge?

A. No.

Q. That is, you only visit Mrs. Giancola and Mr. Giancola?

A. That is right.

Q. Now, when you say that the presence of negroes is depreciative, do you know what depreciative means? I am not trying to confuse you. Do you know what it means? If you don't, I will try to use some other word.

A. I don't know for me, I can't explain.

Q. It means, carry down, lower, take from here down (indicating), like that (raising and lowering hand). Do I

make myself clear now? If I don't, tell me, because I want you to understand.

A. I can't understand this word.

Q. When you said that the presence of negroes was ruinous, do you know what "ruinous" means, to ruin something?

A. Yes.

Q. Ruin the property?

A. Yes.

Q. Did you mean it would ruin the property value, the sale price?

A. No.

279 Q. Not the property value?

A. No.

Mr. Houston: I have no further questions.

Mr. Gilligan: That is all.

(Witness stands aside.)

Mr. Gilligan: Call Mr. DeRita.

Whereupon—PASQUALE DE RITA was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Speak clearly, Mr. DeRita, and don't get excited, and try to get the question.

State your full name.

A. My full name, Pasquale De Rita.

Q. And your last name?

A. De Rita—

Q. What is your color?

A. White.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Were you born here?

A. No, I was born in Italy.

280 Q. Italy?

A. Yes, been a citizen since 1929.

Q. 1929?

A. Yes, sir.

Q. Do you have your naturalization papers here?

A. Yes, sir, I have it here (passing document to clerk).

Q. Where do you live?

A. I live 128 Bryant Street.

Q. With your wife?

A. My wife.

Q. Your wife and you?

A. Yes.

Q. Do you and your wife own that house?

A. Yes, sir.

Mr. Gilligan: That is all.

Now, if Your Honor please, I am deliberately restricting my direct examination so that these gentlemen, if they want to go off into a new field, will have to be responsible, because I want them to be responsive to what I asked him.

Mr. Houston: Now, let me see, Mr. Gilligan, I was trying to read the exhibit.

Mr. Gilligan: I thought you told me it was all right.

Mr. Houston: I am trying to get my position here.

The Court: Of course, Mr. Gilligan knows it was to protect himself in that regard, to make appropriate objections when the questions arise.

Mr. Houston: I am trying to get the scope of the direct examination. This was very short. Am I right that you asked him for—

The Court: Put your questions and I can rule on them.

Mr. Houston: I want—

The Court: Put your questions.

Mr. Houston: You see, Your Honor, you have already told me that I have to be restricted in my cross by the direct, If I did not hear the direct—

The Court: You did not hear the direct examination?

Mr. Houston: I was reading—

The Court: All right, read the examination, Mr. Reporter.

You (addressing Mr. Houston) must have been reading something else.

Mr. Houston: I was trying to examine the exhibits—

The Court: Go ahead and read the examination.

(Whereupon, the record was read by the reporter.)

Mr. Gilligan: May I offer this as an exhibit?

(The document referred to, Naturalization certificate of Pasquale De Rita, was marked "Plaintiff's Exhibit No. 8," and received in evidence.)

282 Mr. Houston: I want to move at this time that the name of Pasquale De Rita be stricken as plaintiff, on the ground that he has not testified he desires the covenant nor any action from this Court. All he testified to is simply ownership of his house, and that is all.

The Court: The motion is overruled.

Mr. Houston: Then, Your Honor, under those circumstances I decline to ask any questions.

Mr. Gilligan: That is all,—pardon me.

Cross-examination.

By Mr. Urciolo:

Q. Mr. De Rita, when you became a citizen in 1929, where did you work?

A. I work—I work in New York City.

Q. New York City?

A. Yes, that is where I take citizenship paper.

Q. Did you ever work with colored people?

A. Work that they help, be colored people.

Q. Did you work with colored people?

A. They help you. They help you, all those places where bricklayer, they help all the people—yes.

Q. How long did you work with colored people?

A. Yes.

Mr. Gilligan: If Your Honor please, I object to this line of examination.

The Court: Objection sustained.

283 Mr. Urciolo: My reason for asking—

The Court: It is not cross-examination.

Mr. Urciolo: I will try to justify it, if I may. My reason for asking is this, again on the same theory that these people have no innate prejudice against the colored people, that it has all been induced by one single person on Bryant Street who has nurtured, so to speak, these people.

What I am trying to prove is that they were born without prejudice.

You never had prejudice—

The Court: You are not speaking from the record.

Mr. Urciolo: What I am trying to develop by my questions to him which was objected to—

The Court: But there is nothing in the record to support your statement, so the Court cannot accept it.

Mr. Urciolo: But I am trying to get it in the record, that he having worked with colored people, has no prejudice.

The Court: I have sustained the objection.

Mr. Urciolo: Well, now, may I ask this:

By Mr. Urciolo:

Q. Mr. DeRita, did you have any prejudice before you came to the United States?

Mr. Gilligan: Object to the question.

The Court: Sustained.

Mr. Urciolo: Very well.

284 By Mr. Urciolo:

Q. Mr. DeRita, did you read the complaint—

Mr. Gilligan: Object to that, if Your Honor please, there was nothing asked about the complaint at all.

Mr. Urciolo: I think I have a right to ask if he signed this complaint.

The Court: He may answer it.

Mr. Gilligan: I withdraw the objection.

By Mr. Urciolo:

Q. Did you sign this complaint (exhibiting document) asking that the negroes move out?

A. Yes, I sign, I sign the paper passed to me, Mrs. Hodge passed to me and I signed.

The Court: You say you understand it?

The Witness: Yes, sir.

By Mr. Urciolo:

Q. Did you read it?

A. I want to keep my property.

Q. Did you read it?

A. Read?

Q. Did you read this—

The Court: Will you stand back there, and he won't have to look away from me.

Mr. Urciolo: Yes, Your Honor.

The Court: He wants to know whether you read  
285 this complaint, did you read it before you signed it?

The Witness: The paper, I sign, somebody spell for me, Mrs. Hodge spell it to me before I sign. Mr. Gilligan say he spell it to me, I sign it to defend my property.

Mr. Urciolo: Your Honor, I ask that the witness be made to answer the question.

The Court: I think he has, in effect, answered it by saying that he did not but it was explained to him.

Is that what you said?

The Witness: First time I signed.

The Court: Somebody explained it to you?

The Witness: Spell it to me.

The Court: Who did it?

The Witness: Mr. Gilligan first time spell it to me.

The Court: Yes?

The Witness (Continuing): To defend my property. After second time, Mrs. Hodge come to my house, I sign, spelled to me, Mr. Giancola too, Mr. Giancola spell it to me all the same.

The Court: All right, next question.

By Mr. Urciolo:

Q. Can you read and write English, Mr. DeRita?

A. I read a little, not much. I no go through the school.  
I school in Italy.

Q. Would you read this covenant (handing paper  
286 to witness)?

A. I need glasses.

The Court: Glasses?

Mr. Gilligan: He explained himself. I think the question is not responsive.

The Court: Objection sustained.

Mr. Urciolo: One more second, please.

Your Honor, I will have to ask the Court's indulgence. These depositions were not given to us until this morning. His apparently is not here yet, and I ask the Court, please, that I may defer further examination until I can get the transcript of the depositions. I do not think I am asking too much, Your Honor, when you consider that, after all, I am a defendant, defending only the second case, and I had a right to rely on the fact that the first case should be dis-

posed of before mine came up, and, therefore, I ask that I be allowed to defer further cross-examination until I get the deposition.

I do not think, sir, that is asking too much.

The Court: The request is denied. The progress of this Court cannot be held up because depositions have not been returned.

By Mr. Urciolo:

Q. Mr. DeRita, do you object to working with colored people?

287 Mr. Gilligan: I object, if Your Honor please.

The Court: Sustained.

The Witness: My—

The Court: Wait a minute.

Mr. Gilligan: Don't answer.

Mr. Urciolo: No further questions.

Mr. Gilligan: That is all.

288 The Court: Now, you are called.

Thereupon, RAPHAEL G. URCILO was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. State your full name.

A. Raphael G. Urciolo.

Q. What is your business?

A. Real estate.

Q. Where is your office?

A. 907 New York Avenue, N. W.

Q. Where do you live?

A. 100 Webster Street, N. W.

Q. Did you bring with you the letter dated June 17, 1944, which you received from me?

The Witness: I refuse to answer that question, Your Honor.

By Mr. Gilligan:

Q. You were subpoenaed, were you not, to bring that letter?

A. I refuse to answer that, Your Honor, on the ground that there are two questions instead of one. The question implies that I received a letter. If you will separate  
289 them, I will be glad to answer them.

The Court: The objection is overruled. Just answer him, please.

By Mr. Gilligan:

Q. Did you bring with you the letter from me dated June 17, 1944?

A. I did not.

Mr. Gilligan: If Your Honor please, I would like to offer in evidence the copy of that letter which I sent to you (addressing the witness).

He was subpoenaed regularly, and ordered to bring the letter with him.

The Court: Did you subpoena him?

Mr. Gilligan: He was subpoenaed, duces tecum, and asked to bring this letter, and the answer is that he did not bring it.

I think I will show it to you (addressing witness) and will let you see whether or not it is a copy. It is the same, other than the lead pencil marks, and tell us whether that is the letter you received.

(Letter passed to witness.)

The Witness: I did receive that letter.

Mr. Gilligan: And, if Your Honor please I offer it in evidence and would like to have it marked as Plaintiffs Exhibit No. 9.  
290

The Court: May be marked and received.

(Said letter, dated June 17, 1944, Gilligan to Urciolo, was marked "Plaintiffs' Exhibit No. 9," and received in evidence.)

Mr. Houston: May I call Your Honor's attention, for the record, to the fact that I think Mr. Gilligan will agree that he is examining under 29,943 and not examining Mr. Urciolo on 26,192?

Mr. Gilligan: Correct.

Mr. Houston: Simply so it will be clarified on the record.

Mr. Gilligan: I would like to read this letter, dated June

17, 1944, addressed to Mr. Raphael G. Urciolo, 907 New York Avenue, N. W., Washington, D. C.:

"DEAR MR. URCILOLO:

"Despite the fact that, in my telephone talk with you several weeks ago, it was my understanding that you had no intention of selling or leasing the houses you own in the 100 block of Bryant Street, N. W. (under deed covenant), my attention has been called to the fact that negroes have looked at one of these houses, and the rumor is that you have several under contract of sale to negroes. The houses in question are 118, 134, 144, 150 and 152 Bryant Street, N. W. I sincerely hope that the information and the rumors are untrue. However, I am putting you on notice, both for yourself and for the straw parties in whose names you may hold these properties, that injunction proceedings will be instituted against you and any negroes who may take over these houses or any of them.

"Yours very truly, Henry Gilligan."

And,

"Post-cript. In view of your full understanding of the terms of these deed covenants, I notify you also that in any action made necessary by you, it will be the aim of the complainants not only to enjoin but to enforce the penalty clause in the covenant."

292 Q. Mr. Urciolo, do you still own the houses at 126 Bryant, 144 Bryant and 152 Bryant Street, Northwest, Lots 109, 135 and 139—

A. Wait a minute.

Mr. Houston: Have you identified them?

The Witness: Give them to me again.

By Mr. Gilligan:

Q. Would you like to have them by street numbers?

A. To the first three, I answer yes.

Q. 126 Bryant Street?

A. Yes.

Q. 144 Bryant Street?

A. Yes.

Q. 152 Bryant Street?

293 A. Yes, sir.

Q. You don't believe in restrictive covenants or deed covenants, do you?

A. Definitely, I do not, against any race or nationality.

Q. For that reason, whenever you get an opportunity to do so, you do your best to defeat them?

A. Always.

Q. In other words, you are a defendant in a case at 55 Randolph Place, are you not?

A. I am one of 12 defendants there, yes.

Q. Well, 55 is a special case, and there is a lot of other defendants in another case; you are a defendant in both cases?

A. I am.

Q. Yes, so is your wife.

A. Yes.

Q. So is your mother, Constance—what is her name?

A. Yes.

Q. And your father.

A. Yes.

Q. In other words, you have some of those properties in straw names?

A. Yes.

294 Q. And it is for that reason, the fact that you do not believe in covenants, that you have sold these three houses which are occupied by Mr. Rowe, Mr. Savage and Mr. Stewart, to colored people?

A. Not for that reason alone.

Q. Not for that reason alone?

A. I sell houses to whoever applies for them.

Q. I am asking about these three houses, you sold these three to people, Rowes, Savage and Stewart,—you did it because you don't believe in this type of covenant?

A. I wouldn't say I did it because of that, but certainly that would not stop me; the fact there is a covenant certainly would not stop me.

Q. Why did you do it?

A. Because I am in the real estate business, buying and selling houses every day.

Q. Therefore there was a good opportunity for you to do that, and you sold them to those colored people.

A. I thought it was an excellent opportunity, especially

since one had already been sold to colored, and he had been allowed to remain for a year alone.

Q. You thought that would justify you in selling these other negro families—to these other negro families, and they are negro, aren't they?

A. I presume they are. I never saw these people, so I have not seen yet who have bought. I have not seen the Rows, for example. I think they are defend-  
295 ants. I have not seen them yet.

Q. You said they were negroes, in answer to my question.

Mr. Houston: Read the record.

The Witness: If I did, I am changing my testimony now, to state that I do not know what they are. Most of the times these calls come over the telephone. I am not going to insult anyone and ask him what his nationality is, particularly over the telephone.

By Mr. Gilligan:

Q. You drew the deed, in other words, to these people, did you not?

A. Yes.

Q. Executed in your office, were they not?

A. Either there or nearby.

Q. It was your own notary public in your office that took them, was it not?

A. No.

Q. Sure?

A. Positive.

Q. You have never seen them, have you?

A. Which ones?

Q. Have you ever seen Mr. Robert H. Rowe?

A. Never.

Q. Isabella J. Rowe?

A. Never.

296 Q. Hubert B. Savage?

A. Yes.

Q. Is he a colored man, by looks?

A. As far as I know he is a colored man or an Indian.

Q. Georgia M. Savage, that is his wife?

A. I don't recall her at all.

Q. Pauline B. Stewart?

A. I have. I saw Miss Stewart for the first time at the title company, as well as Mr. Savage. I saw him for the first time at the title company.

Q. I would like to ask you if you can remember what you paid for the Rowe house which is No. 118 Bryant Street.

A. I don't remember, Mr. Gilligan, but I would say from \$6,000,—around \$6,000; most likely less.

Q. What did you sell it for?

A. It was sold for over \$9,000.

Q. So that you had quite a good profit in the sale there?

A. An excellent profit.

Q. By the way, are you a real estate broker?

A. I am a real estate broker.

Q. With a license from the Real Estate Commission?

A. I have a license from the Real Estate Commission.

Q. As a broker?

A. As a broker.

297 Q. If I should call attention to the fact that this second deed of trust in that house at—at the Rowe house; put it that way—that it called for \$3,993.66, you would probably understand that that is correct?

A. (No response.)

Q. Do you know where it was executed?

A. I don't know where that was executed.

Q. You were not present when it was executed?

A. No.

Q. Did you draw the trust?

A. I drew the trust.

Q. All you do is draw it and keep away from them so that you don't have to see them until you send them to the title company.

Mr. Houston: If Your Honor please, I object—

Mr. Gilligan: He can answer.

Mr. Houston: He is arguing with the witness.

The Court: Sustained. Put the question in another form.

By Mr. Gilligan:

Q. You do your best, do you not, not to come into contact with the people who buy from you, if you know them to be negroes, in these covenanted houses?

A. I don't say that at all. I am only too glad to see them. The only reason I didn't see these, was because Slaughter & Co. sold the house to them; and, at the time of

298 the settlement, I probably had another engagement and didn't go to the title company, as I did in the other two cases.

Q. Suppose you had seen them and made up your mind that they were colored, that would not make any difference to you, would it?

The Court: What do you mean by "colored"?

Mr. Gilligan: Negroes or with negro blood.

The Witness: That would make no difference to me whatever. I have no prejudice whatsoever.

By Mr. Gilligan:

Q. Do you know whether or not any of your agents at this time are endeavoring to sell any of the three houses which you own to negroes?

A. Whom are my agents, Mr. Gilligan?

Q. People who work for you. Let me put it this way and ask you this: A young man who works in your office—so he says—brought a negro to 126 Bryant Street and asked for permission to go through it, within the last three days. Did you know that?

A. 126?

Q. 126.

A. No, I didn't, but I will add this, for your information: I certainly would have no objection to any of them doing it.

Q. So that even while this suit is pending, it would  
299 not make any difference to you if you could get a negro purchaser, you would take one, if you could get the price you are asking?

A. I think I would.

Q. In other words, what you are interested in is making as much money as you can possibly make out of the houses you buy and sell?

A. That is correct.

Q. Doesn't make any difference to whom you sell?

A. No, it makes no difference, except that I have an added reason, the reason being that since it is about five times as hard for colored people and foreigners to get houses, I always prefer, if I had a choice between selling to a colored man or a foreigner, and another—I would prefer to sell to the colored man because he has so much harder time getting a house than the other person.

Q. So that no matter whether it is covenanted or not—

A. I don't believe in covenants at all.

Q. And they have so much trouble, whether covenanted or not, whether as a lawyer you know that the courts of the District have upheld covenants—that makes no difference, you will still sell to colored?

A. I would not say that; I would say if there were a definite rule,—about covenants—then, of course, I would not violate it.

300 Q. And you do not know of any definite rule in the District of Columbia?

A. I am afraid it is rather jumbled, in *Hundley v. Gorewitz*; the Court of Appeals having reversed the lower court and I think that reversed the situation.

Q. You read the entire action?

A. Read it carefully, every word and read a most interesting dissenting opinion.

Q. I am sure you did; there is no question about that.

Let me ask you this: You authorized Mr. Houston to bring suit for you prior to selling these people houses,—selling these houses to colored people?

A. I did.

Q. In Civil Action 27,958, marked Plaintiff's Exhibit No. 1, and I ask you if this is the suit you authorized him to bring, (indicating Exhibit 1).

A. Yes, that is the suit I authorized him to bring.

Q. What was it for? What were you going to try to do?

A. That was a suit to quiet title.

Q. Go ahead and explain what you mean.

A. Well, there were in that square, there were some houses that were perpetually covenanted against negroes—

Q. Do you know which ones they were?

A. Yes, I do.

Q. Which are they, just roughly?

301 A. Houses 114 to 154 Bryant Street, and houses 135 to 151 Adams Street.

Q. Is that included in this suit?

A. To my recollection, I was discussing it, but I don't recall.

Q. Look at it and see.

A. It has been several years.

Q. That hasn't been several years. When was this suit brought?

A. At least two years ago.

Q. Look and see if you can tell when it was filed. Tell the Court.

A. March 5th.

Q. What year?

A. '45, but I mean I started to work on this at least three years ago.

Q. On Bryant Street, before you bought any of those houses?

A. Oh, I have had them about three years.

Q. You have?

A. Yes.

Q. This was filed on March 5, 1945, by Mr. Houston and with your instruction?

A. Correct.

Q. And the theory was that you wanted to do  
302 away with all of these covenants on that block, by quieting the title and removing the cloud?

A. That is only one covenant.

Q. The covenant as to each house?

A. Yes.

Q. So that you could then go ahead as to any of these, selling any of those houses legitimately, legally to colored—

A. So that I could sell to anyone who wanted them.

Q. You would not have to bring suit like this in order to sell to white people, would you?

A. No.

Q. And it was so that you might sell to colored or negroes?

A. Yes.

Q. That is all right; and after filing this suit, as you did, on March 5th, 1945, thereafter you sold three of these houses to negroes?

A. I think it was. We sold them prior—

Q. Well, the deeds did not go on record till afterward; let's put it that way.

A. Well, about that time—about that time—well, a week before or after; that, I can't remember.

Q. I will enlighten you by telling you that they all went on record after this was filed, and following the sale of those houses to negroes—you authorized Mr.  
303 Houston to dismiss this suit.

A. I did.

Q. After they had been filed, so that you couldn't do it without question, so that there isn't any question on earth whatever but that you knew about the covenant.

A. Yes, I knew all about the covenant.

Q. First of all, were you going to try to do this in a perfectly straight-forward legal way, bringing action, and getting it out of the way through Court action?

A. What was your question again?

Q. I say, first of all you were going to do it in a perfectly straight-forward legal way by filing this action and getting the covenant set aside?

A. Yes.

Q. And then, getting an opportunity to sell three of the houses very advantageously, you decided to go ahead and sell them to negroes?

A. That is substantially correct. Whenever I get calls for them, I sold them.

Q. Now, let's see,—you stated that you made, on the Rowe house, about how much money?

A. Roughly, \$3,000.

Q. On the Stewart house, can you place that one?

A. Yes, about the same.

Q. Well, wait a minute—and the Stewart house, your deed of trust, instead of being \$3,993.66, your second deed in which Charles H. Houston is trustee, calls for \$4,193.51, that is about your profit represented there.

A. Roughly, not exactly; because in the meantime the trusts had been paid down, the first trust had been paid down somewhat.

Q. But they did pay you some cash, too?

A. But I think they had been paid down more than the cash.

Q. That is roughly correct?

A. Roughly correct.

Q. Let's take the Savaga house; the deed of trust there would indicate that Mr. Houston is also the trustee, and the trust is for \$3,884.74; is that about the amount of profit you made?

A. About.

Q. So that you made a pretty good profit on these?

A. Certainly.

Q. It pays to go into court and let yourself be sued, by trying to defeat the covenant; look at the money you make.

A. So that people can't hereafter go into court saying that negroes ruin the neighborhood. What this does is to increase rather than decrease the value.

Q. You have no use whatever for the white population, the white people in these places, at all?

A. I have no interest whatsoever in a man's  
305 color; only what he is. I certainly would prefer an educated college professor, so-called colored, to an uneducated filthy white. To me, it is the man; not the color.

Q. Let me ask you, just to get your views as to the color, now—you would prefer a well educated negro to a well educated white man?

A. No, I would make no distinction.

Q. None whatever?

A. I would treat them equally, then.

Q. So that the fact that these houses on Bryant Street, 114 through 152, were all occupied by white people, white owners or tenants, with the exception of the Hurd house, that didn't make any difference to you as to whether or not those people would like you selling to colored?

A. That was their business; not mine.

Q. That is what I say. Are you planning on moving into 126 Bryant Street, yourself?

A. Not at present; no.

Q. You are not?

A. No.

Q. Are you contemplating it in the future?

A. No.

Mr. Gilligan: I think that is about all I want to ask you.

The Court: Mr. Houston.

306 Mr. Houston: Just a minute, your Honor.

Mr. Gilligan: Just a minute; I have one other question.

By Mr. Gilligan:

Q. You knew, of course, when you sold these houses to negroes that there was a suit pending against the white people who sold to Mr. and Mrs. Hurd, did you not?

A. I had heard that there been, there was a suit; and I knew as a fact that there was a suit; but I figured it had continued so long in court without action that it had been abandoned, as happens in so many of these cases.

Q. Did you consult Mr. Houston before you sold the three houses?

A. No, indeed.

Q. Do you know, or did you, that Mr. Houston was the attorney for Mr. and Mrs. Hurd in that case?

A. I had heard he was, yes.

Q. He is your attorney—has been?

A. He has.

Q. And without consulting your attorney, who was representing this defendant in a suit already pending in that block, you just went ahead and sold the houses to negroes?

A. I used my own judgment; I don't have to have his counsel for that.

Q. You know that the reason for failure to get that case was that it was necessary to publish against non-residents?

307 A. I had heard that.

Q. So that you knew there was a suit pending?

A. Yes.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Houston:

Q. Mr. Urciolo, did you sell the Hurd house?

A. I certainly did not.

Q. Either as owner or broker?

A. Neither. I had no connection whatsoever with the Hurd, either directly, indirectly, or otherwise.

Q. Now, do you sell all the houses through your office, or did you list the houses through other real estate firms?

A. I listed them with others, 99 per cent of the time. We always list with other firms, and first contract come, first acted upon, if it is satisfactory, of course.

Q. Now, take the matter of the prices in the case of these three houses. Did you have to pay commissions out of the sales price on any of these?

A. Yes, full commission in all three cases.

Q. So that that cuts down your commission. How much would the commission be, approximately \$450?

A. Roughly that.

Q. On each house?

A. Roughly that.

308 Q. So that of the profit that you mentioned, there would have to be deducted the commissions?

A. Yes, sir.

Q. Did you make any repairs or anything to any of these houses before they were sold?

A. Yes.

Q. Approximately how much did you spend, say, on the Rowe house, in repairs?

A. Oh, the Rowe house perhaps \$300, or \$400.

Q. And the Savage house?

A. In the Savage house I made little or no repairs.

Q. In the Stewart house?

A. In the Stewart house, at least a thousand to \$1500.

Q. And would that have to be taken off the amount of money that you have already listed as being a profit in the transaction?

A. Well—yes.

Q. So that repairs and the commissions and the interest on the carrying charges on the houses would all have to be deducted?

A. Naturally.

Q. Plus taxes?

A. Naturally.

Q. How long did you hold these houses before you sold them?

309 A. A couple of years.

The Witness: I have to guess, Your Honor. I sell so many houses for so many people, I naturally have to approximate.

By Mr. Houston:

Q. You are not the first person to sell to a negro or a person supposed to be a negro, on Bryant Street, are you?

A. I was not, unless Mr. Hurd is not a negro; then, I would be the first to sell to a negro.

Q. As a matter of fact, it was a fact that Hurd was—Hurd's family was in Bryant Street and apparently getting along well—Did that have any influence on your opinion to sell these other houses?

A. That had no influence on me whatsoever. That is their worry, not mine.

Q. Now, it is an allegation in this suit that ownership,

or occupancy, by negroes is absolutely ruinous of the property here on Bryant Street. Is that true or false?

A. That is absolutely the most absurd of absurdities.

Q. Is it true or is it not true that because of the restrictive covenants creating an artificial limitation on the market, so far as negroes are concerned, that negroes are forced to pay more for antiquated old houses?

A. They have to pay 30 to 40 per cent more.

310 Q. Could you have sold these houses to whites for the same amount of money that negroes paid for them?

A. I don't believe the whites would pay even the trusts on them.

Q. Which would amount to what?

A. Four to five thousand dollars; except perhaps to a speculator who is just waiting to see what is going to happen. They are white elephants. The whites don't want them, the negroes can't have them.

Q. Now, did you know the race of these particular persons at the time you made the contracts of sale?

A. I did not see these people, two of them, until at the title company. One, the ~~Rowes~~, I have not seen to this day. The Stewart house was sold by R. W. Horad, a real estate firm; the Rowe house was sold by Slaughter & Co. on 17th and M Streets. They have their office across from the Mayflower.

Q. Is that a white firm or a colored firm?

A. A white firm, to the best of my knowledge. I never know who is white and colored, as an anthropology student—a student of anthropology—I certainly wouldn't make that horrible error, and if the Savage house, was sold to the best of my recollection by the Park Road Housing Commission.

Q. Now, Mr. Urciolo, what do you consider the usual dividing line between the white and negro populations in that area.

311 Mr. Gilligan: If Your Honor please—go ahead. I won't object to that.

Mr. Houston: That is all right. I think I have gone about as far as I can, as far as the scope of the direct examination conducted by Mr. Gilligan, and I simply announce that at the proper time I will call Mr. Urciolo back to the stand.

Mr. Gilligan: I would like to ask two or three more questions.

Redirect examination.

By Mr. Gilligan:

Q. Mr. Horad is understood to be a negro real estate man, is he not?

A. He looks whiter than I.

Q. I didn't ask you that.

A. I don't know.

Q. You never heard him say that he was a negro?

A. (No response.)

Q. Think back.

A. I think I heard him say that he was a negro, on the stand.

Q. I think—I wonder if you read—Park Road Housing Company,—who is that?

A. That is owned by Dr. Napoleon Rivers.

Q. Is he a negro?

A. He is a negro.

312 Q. Do you know a Mr. Heeney of Slaughter & Co.?

A. Yes.

Q. Do you know as a matter of fact that it was Mr. Heeney who sold the house to Hurd—do you know whether or not it is?

A. He sold the house to the Rows.

Mr. Houston: Rowe?

By Mr. Gilligan:

Q. Did he also sell the house to Mr. and Mrs. Hurd?

A. I heard that.

Q. Yes, and do you know whether or not he accepted service of the papers in the complaint against the non-resident defendants, Ryan—this all a part of proper cross examination.

A. That,—if I testified as to that,—it is only hearsay.

Q. All right, you needn't answer the question.

A. I heard he did.

Q. You needn't answer the question.

I ask you whether you had sold any of those houses. I want to make sure of that—

Mr. Houston: May I see that?

Mr. Gilligan: Sure; forgive me (passing paper writing to counsel.)

By Mr. Gilligan:

313 Q. I show you a letter dated March 20, 1945, on the letterhead of Urciolo Realty Company, addressed to Ernest W. Pearson, 126 Bryant Street, Northwest, Washington, D. C., and ask if that is from your office?

A. That is from my office.

Q. Suppose you read it to the Court.

A. (Reading.) "March 20, 1945.

"Mr. Ernest W. Pearson, 126 Bryant Street, N. W., Washington, D. C.

"DEAR MR. PEARSON:

"Please be informed that premises 126 Bryant Street, Northwest, has been sold through the Park Road Housing Commission, 1036 Park Road, Northwest. All future transactions will have to be made through that office.

"Yours very truly, Urciolo Realty Company, by George L. Cates."

Q. Do you know to whom you had sold that house?

A. That I can't remember.

Q. Perhaps I can refresh your memory.

Mr. Gilligan: I would like to have this entered, if Your Honor please, as Plaintiffs' Exhibit, whatever it might be.

(The letter read by the witness, under date of March 20, 1945, was marked "Plaintiffs' Exhibit No. 10, and received in evidence.)

314 By Mr. Gilligan:

Q. Just to refresh your memory, maybe you can tell from that to whom the property had been sold by you?

A. I recall, E. W. Pearson—no, I am sorry.

Q. Notice down there (indicating)?

A. Oh, yes, yes—Smith, Corporal Nathaniel.

Q. Oh, Corporal Nathaniel Smith. And Smith & Carr?

A. Yes.

Q. Is he a negro?

A. I have never seen him.

Q. Did it go through?

A. It fell through.

Q. Tell why.

A. Their attorney, Mensch, a certain Mr. Mensch called up and said that they didn't want to buy the property.

Q. Do your best to remember now as to just the reason they gave you.

A. I think that the reason that they did not want to buy the property is because their attorney, Mr. Mensch, advised them not to buy it.

Q. What?

A. One, the price was too high; two, he had been unable to gain entrance into the premises, the tenant would not allow him to go in; three, because he could not get a loan because the property had a restrictive covenant on it.

315 Q. And you released them from it?

A. And I sent him back the money.

Q. Did you ever get any offer for that property from any white man?

A. Never.

Q. Would you have dealt with a white, if you could have dealt with a white man for that property?

A. Certainly.

Q. But nobody offered to buy it?

A. Nobody.

Q. How about the tenant in the property?

A. Never made me an offer.

Q. Did he ever make an offer through your office?

A. Not through my office or any other.

Q. You and the others certainly get together from time to time and talk over questions of the office, and offers?

A. Certainly.

Q. And nobody in your office ever called your attention to the fact that Mr. Pearson, in the house, wanted to know whether or not he could not buy that house?

A. This is news to me. I will make him a tender now, to sell him the house.

Q. I am asking what happened to the—what happened before; that is all.

A. Mr. Gilligan, I certainly would not refuse to sell  
316 the property to a man because he is white or because he is a negro. The point with me is, especially, since

most of our work is done over the phone,—whoever makes me the best offer, I take it.

Q. Best offer?

A. The best offer, naturally.

Q. That is right.

A. But I mean, I won't refuse because it happens to be white or negro.

Mr. Gilligan: That is all.

Mr. Houston: And the best offer you have received on the property on Bryant Street, the properties which have been sold, you have taken without knowing whether they were colored or white?

The Witness: That is correct.

By Mr. Gilligan:

Q. Even though the people who called you were negro real estate agents?

A. Even so.

Mr. Gilligan: That is all.

Recross-examination.

By Mr. Houston:

Q. Just a moment. It is not a fact, is it, that in the District of Columbia negro real estate agents are limited to selling houses or buying houses to or from negroes only?

317 A. I don't understand.

Q. It is not a fact that negro real estate operators in the District of Columbia are restricted to buying and selling houses for negroes only?

A. Of course not. There is no such rule in any real estate act. I know that as a fact, because I have read it.

Q. Well, as a matter of fact, don't you also know that negro real estate operators do buy and sell property for whites?

A. Definitely.

Q. So that the very fact that it is a negro real estate firm will be no indication whatsoever as to who the purchaser was?

A. None whatsoever. I have an offer in my pocket from a negro agent offering to sell me property in a definitely white neighborhood,—I have one before me now.

Mr. Houston: I have nothing further.

Mr. Gilligan: That is all.

I would like to call just one other witness, if Your Honor please, Mr. E. W. Pearson.

Thereupon—ERNEST W. PEARSON was called as a witness by and on behalf of the Plaintiffs and, having been first duly sworn, was examined and testified as follows:

318 Direct examination.

By Mr. Gilligan:

Q. Mr. Pearson, state your full name, please, sir.

A. Ernest William Pearson.

Q. Where do you live?

A. At 126 Bryant Street, N. W.

Q. What is your business?

A. Salesman.

Q. Salesman?

A. Yes, sir.

Mr. Houston: Of what?

By Mr. Gilligan:

Q. What kind of salesman, what do you sell?

A. For a packing house, Armour & Company.

Q. Armour & Company?

A. That is right.

Mr. Houston: Meat salesman?

By Mr. Gilligan:

Q. Are you connected with Armour & Company as a meat salesman?

A. No.

Q. What kind of a salesman?

A. Produce.

Q. What?

A. Produce.

319 / Mr. Houston: Produce.

By Mr. Gilligan:

Q. Did you ever have colored people to come to look at your house, sent by Mr. Urciolo?

A. Yes.

Mr. Houston: Just a moment. I would like before you get that, to identify how he knows they were sent by Mr. Urciolo.

Mr. Gilligan: He said they had been sent.

By Mr. Gilligan:

Q. Do you know Mr. Urciolo?

A. Yes.

Q. Where is he in the room?

A. That gentleman (indicating Mr. Urciolo).

Q. Sitting there?

A. Yes.

Q. Did he ever come to the house?

A. I don't think so, I don't recall him ever.

Q. How do you know that anybody coming to your house was from Mr. Urciolo's office?

A. He said he was working for Mr. Urciolo.

Mr. Houston: "He said," I object to that.

The Court: Objection sustained.

Mr. Mr. Gilligan:

Q. Did a negro ever come to look at your house?

A. Yes, they did.

320 Q. Brought by a white real estate man?

A. No, brought by Mr. Rivers. I guess he owns the Park Road Housing Corporation, or some such name as that.

Q. Did you let him see the house?

A. Yes.

Q. When was that?

A. Well, now, I declare—

Q. In a general way, how long has it been?

A. I don't know. Well, really I don't. I was up, I had been up the river fishing for perch, and now that must have been—it must have been early this spring.

Q. Early this last spring?

A. Yes.

Q. Did you ever endeavor to make an offer for the purchase of that house, yourself, to Mr. Urciolo's office?

A. I don't know that I made an offer. I let them know, however, that I was in the market for the house, and that I was a prospective buyer and I merely inquired about the house,—yes.

Q. What was the answer given to you?

A. Well, now—

Mr. Houston: Let's identify Mr. Urciolo's office.

By Mr. Gilligan:

Q. How do you know it was Mr. Urciolo's office?

321 A. Because it had a sign with letters on it, great big, you couldn't see anything but "Urciolo."

Q. You went to the office?

A. Yes. I went up to pay my rent once.

Q. Where you paid your rent?

A. Yes.

Q. Are you paying rent there now?

A. No, sir.

Q. Where are you paying now?

A. Park Road Housing Company.

Q. How long have you been paying it there?

A. Well, I think early this spring, maybe.

Q. Early this spring?

A. Yes, sir. I took no special note of it, I think it was early this spring.

Q. Now, when you were at the office of Mr. Urciolo, you spoke to whom in the office, do you know who it was?

A. No, whoever made out my rent receipt. I don't know whether it was the young lady, or I don't know whether it was an older fellow than this gentleman (indicating). This fellow was busy on the phone at the time, and I didn't have any conversation with him at that time, particular time, but I let it be known that I would buy the house, that I was in the market for the house because I figured I was going to have to move when it changed hands.

322 Q. Did anybody ever come see you from that office about selling the house to you?

A. No, sir.

Mr. Gilligan: Pardon me, Mr. Houston, and Mr. Urciolo, (passing paper to counsel).

By Mr. Gilligan:

Q. Now, I show you this letter and ask you if you received it in regard to the house in which you live (passing paper to witness)?

A. I guess I received that letter just recently.

Mr. Gilligan: If there is no objection, I would like to offer that in evidence as a Plaintiffs' Exhibit.

Mr. Houston: I do object. I want to know what the purpose is.

Mr. Gilligan: I will be very happy to explain it. I am trying to show that Mr. Urciolo probably is not the owner of that house at the present time, although he testified that he owned all three houses.

Mr. Houston: If that is your purpose, I have no objection.

The Court: It may be received.

(Said letter, dated September 6, 1945, Park Road Housing Co. to Pearson, was marked "Plaintiffs' Exhibit No. 11," and received in evidence.)

The Court: Will you read it, please?

Mr. Gilligan: It is dated September 6, 1945, on the letterhead of the Park Road Housing Company, 1036  
323 Park Road N. W., Washington 10, D. C.

(Reading): "Mr. E. W. Pearson, 126 Bryant Street, N. W., Washington, D. C.

"My dear sir: We are offering you, for sale or rent, a six-room, two-story, semi-detached house located at 1026 Irving Street, N. E.

"Price: \$8,950; down payment: \$1,400.

"Rent: \$75.00, as is.

"We are offering you the above opportunity with the hope that you may cooperate in helping the owner to occupy the house where you now live.

"Very sincerely yours,

"W. N. Rivers."

By Mr. Gilligan:

Q. Is Mr. Rivers a negro or a white man?

A. He is a negro.

Q. And that is where you are paying your rent now?

A. That is right.

Q. Did he tell you who the owner was?

A. No, I didn't inquire.

Q. You didn't inquire?

A. No.

Q. You don't think it is Mr. Urciolo, do you?

A. Well, Mr. Gilligan—

Q. You can't answer that?

324 A. I never gave it two thoughts.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Pearson, how much rent do you pay?

A. I pay \$42.50 per month.

Q. Would you please describe your house?

A. Yes. It is a six—well, it is a seven room house, seven rooms and bath, and I had rather—I wouldn't want to go much further in describing it than that because it is just a house, that is all.

Q. All right.

A. It isn't in very good condition.

Q. You don't have to go further.

A. It is a brick house.

Q. Three stories, is it not?

A. No, it is two stories with room on—I don't know whether you call that three stories, three in front and two in the rear.

Q. You have a front and rear yard?

A. Yes.

Q. Have a bath?

A. Yes.

Q. Electricity?

A. Yes.

325 Q. Gas?

A. Yes.

Q. Do you have a refrigerator?

A. Well, that I own myself.

Q. Do you have a garage?

A. I guess you would call it that, Mr. Urciolo, although I wouldn't keep a car in it, of my own. I never put any car in there.

Q. Did you go and see this house at 1026 Irving Street that was in Mr. Gilligan's letter that was tendered to you?

A. Yes.

Q. Did you ever make a report on it?

A. What? Yes.

Q. And the answer as to that?

A. I told him the house was impossible for me.

Mr. Urciolo: No further questions.

Mr. Gilligan: One question.

Re-direct examination.

By Mr. Gilligan:

Q. How long have you been living at 126 Bryant Street?

A. Oh, I have lived in that house since 1940.

Q. So that you were there on January 1st, 1941?

A. Yes.

Mr. Gilligan: That is all.

The Court: Wait a minute.

326 Re-cross-examination.

By Mr. Houston:

Q. Have you had any trouble with the negroes on Bryant Street?

A. No, sir.

Q. Now, did Mr. Marchegiani live next door to you?

A. Yes, sir.

Q. Did you ever go in his house during the time that he lived next door to you?

A. Yes, sir.

Q. Did his house and your house—are they just about the same construction, everything?

A. They are the same operation, except this—that Mr. Marchegiani has made a lot of improvements in his house and kept it in shape when mine hasn't been.

Q. But they are the same construction?

A. Same construction, same builder.

Q. Same layout?

A. That is right.

Mr. Urciolo: Mr. Pearson, you say you are a produce salesman?

The Witness: That is correct.

Mr. Urciolo: Do you sell both to white and colored?

The Witness: Yes, I sell to everyone, anyone.

Mr. Urciolo: Thank you, that is all.

327 Mr. Gilligan: That is all.

Mr. Houston: In this connection, may it please the Court, the tender was limited to the fact that this was introduced as evidence that the house 126 Bryant Street had probably been sold out of Mr. Urciolo's ownership.

In view of the testimony in examination of Mr. Urciolo by Mr. Gilligan as to the operations of our negro real estate firms, since it appears that here was a negro real estate firm dealing with a white man, I ask that this same letter be used or be admitted for that purpose also.

The Court: You want it for general purposes?

Mr. Houston: General purposes.

The Court: Any objection?

Mr. Gilligan: That will be all right.

The Court: The limit heretofore placed on it is now withdrawn.

Mr. Houston: With the note, however, that there has been no showing in this case that Mr. Rivers is any agent of Mr. Urciolo's, in the sense that he is operating his own independent business.

Mr. Gilligan: Only this—he says he wants to get the house for the owner.

Mr. Houston: You have not established who the owner is.

Mr. Gilligan: I established who the owner was, Mr. Urciolo was the owner. That is the reason I asked  
328 whether or not he was going to occupy it.

Mr. Houston: Let's get that straight. As I understood it, Mr. Gilligan said when he put this letter in, it was for the purpose of showing that Mr. Urciolo did not own it. Now, Mr. Gilligan gets up and says that this letter says Mr. Urciolo does own the house.

Mr. Gilligan: You just had it backward. What I am really putting that in for is to show, if Your Honor please, that you cannot depend on the testimony of Mr. Urciolo.

The Court: I think the effect of his testimony should be argued with the other facts of the case.

Mr. Gilligan: I thought I ought to answer Mr. Houston.

I am inclined to call just one more witness, if Your Honor please.

I would like to call Mrs. Hurd.

Thereupon, MRS. MARY IRENE HURD was called as a witness by and on behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. Will you give your full name, please?

A. Mrs. Mary Irene Hurd.

Mr. Houston: Louder.

329 Mr. Gilligan: Louder, please.

The Witness: Mary Irene Hurd.

By Mr. Gilligan:

Q. Where do you live?

A. 116 Bryant Street, Northwest.

Q. And you are the wife of J. M. Hurd?

A. I am.

Q. Do you have any negro blood in you?

A. I do not know.

Q. What was your mother?

A. I have never seen my mother, nor my father.

Q. Nor your father?

A. No.

Q. And you never had—

A. I have never seen any of my people.

Q. How was that?

A. I am an orphan.

Q. Orphan?

A. Yes.

Q. And you don't know anything about your forebearers?

A. Not at all.

Q. Where were you born?

A. I was told I was born here in Washington.

Q. Washington, D. C.?

A. Yes.

330 Q. And do you know anything about where your mother or father were born?

A. No, I do not.

Q. Know nothing about them at all?

A. Nothing about them, at all.

Q. So that you know nothing about your people at all?

A. No, sir.

Q. Where do you attend church?

A. Holy Redeemer.

Q. The Holy Redeemer Church?

A. Yes, I do.

Q. Is that a colored church?

A. Yes.

Q. Do you have any children?

A. A son.

Q. How old is he?

A. Twenty-two.

Q. Where did he go to school when he was of school age?

A. He went to school at—Dunbar.

Q. Did he go to a negro school?

A. Yes.

Mr. Gilligan: I think that is all I wanted to ask.

Cross-examination.

By Mr. Houston:

331 Q. The Holy Redeemer Church is a Catholic, or what?

A. Catholic Church. Everybody goes there. It is a universal church.

Q. You mean white and negroes go there?

A. Yes.

By Mr. Gilligan:

Q. When you went to school in the District, where did you go to school?

A. I went to a colored school.

Q. A colored school?

A. Yes, I did.

Q. Did you graduate from Wilson Normal Teachers College?

A. No, I did not.

Q. Which school?

A. Grammar school.

Q. Which one,—that's all right; you said it was a negro school.

A. Yes.

Mr. Gilligan: Thank you, that is all.

By Mr. Houston:

Q. Where is your son now?

A. My son is stationed in New York.

Q. By "stationed in New York" what do you mean?

A. He is a sailor.

Q. Merchant Marine or United States?

332 A. First Class Seaman in the Navy.

Q. First Class Seaman in the Navy?

A. Yes.

Q. How long has he been in the Navy?

A. Three years.

Q. He has been overseas?

A. Twenty-five months overseas.

Q. Do you know whether he has been in combat?

A. Yes, he was in one combat duty.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hurd, may I ask you how much money did you pay for your house?

A. My husband bought the house, and I do not know.

Q. How long have you lived in it?

A. Since May the 17th, 1944.

Mr. Urciolo: Thank you, that is all.

Mr. Gilligan: That is all.

And, that is our case, if your Honor please.

Mr. Houston: We have a—

Mr. Urciolo (interposing): Your Honor, I make a motion that the complaint be dismissed at this time, inasmuch as the plaintiffs have not proved that either the plaintiffs are white or that the defendants are colored.

The Court: The motion is overruled.

333 Mr. Houston: I should like to join in that motion, in so far as case 26,192 is concerned.

If Your Honor will recall, 26,192 was not the case in which Monsignor Cooper and Dr.—whatever his name was—put on. Therefore, I have not put on testimony and the defense has not been opened in 26,192.

Now, the only evidence which you have, I respectfully submit—you have no evidence to establish a breach of the covenant, or no evidence on the matter of the Hurds, and for that reason I move to dismiss as to 26,192.

The Court: The motion is overruled.

Mr. Houston: We have here Miss Grace Bush, Principal from the Gage School. I would like to put her on, a little out of turn.

The Court: Are there any other witnesses back in the room?

(No response.)

Mr. Gilligan: I make no objection to Miss Bush testifying.

The Court: Well, it is all right. Are there other witnesses back there? If so, you are supposed to step out of the room.

Are you folks witnesses?

Mrs. Rowe: I am Mrs. Rowe.

Mr. Houston: She is a defendant.

334 " Thereupon MISS GRACE BUSH was called as a witness by and on behalf of the Defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Miss Bush, please state your full name?

A. Grace Bush.

Q. You are Administrative Principal of the Gage and the Noyes Schools?

A. That is right.

Q. Will you tell us where the Gage School is located and the Noyes school is located?

A. The Gage School is on Second Street, Northwest, between U and V.

Q. Is it in front of the intersection of the dead end of Elm Street and Second?

A. That is true.

Q. And where is the Noyes School located?

A. On the corner of Tenth and Franklin Streets, Northeast.

Q. Now, going to the Gage School how long have you been at the Gage School as Administrative Principal, Miss Bush?

A. Four years, I believe.

335 Q. Will it go back to 1941?

A. Yes.

Q. How large a room, how large a school is the Gage School, so far as rooms are concerned?

A. There are twelve rooms.

Q. Twelve rooms?

A. Yes.

Q. What is the enrollment at the Gage School this year?

A. 192.

Q. 192—how many rooms do these 192 children use?

A. Seven.

Q. There are five rooms not in use?

A. Not used for other purposes; there is a nursing office, a dental clinic—

Q. I mean, there are five rooms not used for instruction purposes?

A. Not full time.

Q. Yes, and of those 192 pupils, Miss Bush, they run to what grades?

A. Sixth, and then an atypical class.

Q. Miss Bush, please tell us how many of those children come from homes west of First Street?

A. Twenty-seven.

Q. Twenty-seven?

A. Yes, if you mean west of First, not including First, not the west side of First.

336 Q. Twenty-seven, west of First Street.

A. Yes.

Q. Miss Bush, after school is out, are the grounds used as a playground by white or colored children, after school hours?

A. They are supposed to be used by white only.

Q. But as a matter of fact, what is the situation?

A. As a matter of fact, the white children were driven off by the colored in the neighborhood, so to avoid trouble we abdicated after school hours.

Q. So that as a matter of fact, the colored have now pre-empted the grounds for play purposes after school hours?

A. After school hours, yes.

Q. Is it true that most of the white—the white people live on First Street—I mean, including the west side of First—the white population is decidedly on First Street and east?

A. That is right.

Q. Are there very many colored people—sorry; strike that.

Are there very many white people west of First Street?

A. Twenty-seven of our children. I really don't know how many houses are occupied by white.

Q. Just a moment—And how long has that condition in which—well, have you had proportionately a smaller number of children at the Gage School living west of First Street for the last two or three years?

A. It has varied very little, the enrollment, that is. I have it since 1934, with the exception of one year, and 1942 it was 218; '43, 203; in '44, 189, taking the enrollment for the last one being taken in September.

Q. And that was—?

A. For 1945, 194.

Q. Now, you testified on a previous occasion, do you remember, on Adams Street?

A. Yes.

Q. You came down two or three times, I believe.

A. Yes.

Q. Do you remember what the enrollment of the children living west of First Street was then?

A. I wasn't asked that, at that time.

Q. Well, have you always had a very small percentage of school children at the Gage School living west of First Street since you have been there?

A. Well, we have a smaller percentage now.

Q. The percentage is gradually dropping since you have been there?

A. That is right.

Q. That is, of children living west of First Street?

338

A. Yes.

Cross-examination.

By Mr. Urciolo:

Q. Miss Bush, may I ask you please, is this a special school?

A. No, it is a regular elementary school.

Q. Did you or do you at any time have special classes for backward children?

A. If you mean an opportunity class, we have—no; we did at one time, yes; we had one. We now have an atypical class.

Q. The one atypical?

A. One atypical class.

Q. Is that customary in the general schools, to have an atypical class or classes?

A. These atypical classes are placed where they are most advantageous, for the purpose of helping along where needed.

Q. How many such schools are there, roughly, if you know?

A. I would not know. There are several in our division.

Q. Several in your division?

A. Yes.

Q. Were there several atypical classes in the last five years?

339 A. Yes, I think they are located in exactly the same sections now as they were then.

Q. I mean, were there more in 1942 when the Adams Street trial was on, if you recall?

A. Well, at that time we had one atypical class, where we now have one.

Q. One?

A. Yes.

Mr. Houston: One question—if you don't mind, Mr. Urciolo, before I forget it:

You bring some children to school by bus, do you not?

The Witness: No, that bus this year is used as a transfer; that is, the buses bringing crippled children there, and children for the Sightsaving class from different directions come together there and they transfer them to one bus so they are not our children using that bus.

Mr. Houston: The point is that they are not included in the enrollment, that is what I meant.

I happened to live near there, and have seen the bus while driving by.

By Mr. Urciolo:

Q. Miss Bush, you have so-called colored people to the east, west, north and south of the school; is that correct?

340 A. Not entirely. There is a store directly in front of the building, operated by white people.

Q. A store directly in front of the building?

A. Yes.

Q. Anything else?

A. The corner grocery store. Then, we have children in our building from Flagler Street, which is the street on the west side of the building.

Q. Well, then, Miss Bush, are most of the children, these 27 out of 192 who live west of First Street, are they the children mostly of parents who have businesses in the neighborhood?

A. To my knowledge, that is the only one—to my knowledge, the store is the only one business in the neighborhood, and those children do not attend our school, now they have finished the elementary school.

Q. You didn't understand me, I don't think.

Perhaps I did not make myself clear enough, rather.

My question was: Those 27 children out of the 192 total enrollment, which come from houses west of First Street, are they, those 27, the children of neighborhood store workers or merchants?

A. Not to my knowledge, no.

Q. Now, did there come a time, Miss Bush, when the neighborhood became so mixed up that you were forced to make an agreement with the children, white and 341 colored children, so that they could play, so that the colored children could play in the white playground after school hours?

A. Well, before this present custodian was there, we had one who understood very well boys, and he made an agreement with the boys that they might play on the grounds when our children were not using them, after school hours, that they might play there if they would agree to report and be responsible for any damage. That agreement held until that particular custodian left. There has been no such agreement with the present custodian, nor any such co-operation.

Q. Now, Miss Bush, is that a customary thing? Does that prevail, say, at the Noyes School?

A. No, it was not. We were told that the colored were not to be allowed on our playground. They were to use their own playground around the corner; but, there was so much damage in the breaking of windows that I suggested that they be allowed to use the grounds after school hours when our children were not using them.

Q. Now that they are being allowed to use them, is there still that much damage?

A. There is quite a bit of breakage of window panes.

Q. Would you say less now, or more?

A. More.

Q. There is more now?

A. Yes.

342. Mr. Urciolo: That is all.

Mr. Houston: More under the present custodian. There was less, however, under the first custodian?

The Witness: Because of that agreement, yes.

Mr. Houston: I mean, the boys kept that agreement and they were responsible and repaired the windows, and things like that?

The Witness: They did.

Mr. Houston: For that custodian that was nice to them?

The Witness: Yes.

# Further Cross-examination.

By Mr. Gilligan:

Q. I wanted to ask a question there—Those atypical children, do they all come from the immediate community?

A. What do you mean by "immediate community"?

Q. Well, from the community from which you draw the rest of your children?

A. We draw from a little larger community, because the nearest other atypical school—well, there are two others, in addition; one at the Seaton School at Second and I, I think, and at the Thompson School at Twelfth and L—so you see it would necessarily draw from a little larger area.

Q. In other words, you would not say that the children in the community which your Gage School serves are atypical children?

343 A. No, no.

Q. You spoke of 27 of these children coming from west of First Street this year. Have you the comparison with other years, those coming from west of First Street?

A. No, I have not.

Q. It is about the same?

A. Well, I have never really gone into that before.

Q. How did you happen to do it?

A. I was asked, on a summons.

Q. Asked that?

A. Yes.

Q. So that you have no comparison with other years?

A. No, I have not.

Q. Did I understand you to say that the enrollment this year was 194 or 192?

A. 194. It was 189 last year.

Q. An increase?

A. Yes.

Q. Any other white children close by the Gage School, from this particular community, could attend?

A. Not close. The closest elementary school is at Lincoln Road and Prospect, just a little this side of Florida Avenue.

Q. You don't know whether or not that is well attended?

A. No, I don't.

344 Redirect examination.

By Mr. Houston:

Q. That is at Harewood Road and T Street?

A. Lincoln Road and Prospect.

Q. Right back across—right back of North Capitol?

A. Yes, just about a half a block off North Capitol, but down by R, just north of R Street.

Q. What is that school called?

A. Emery.

Q. How many of those 27 children, Miss Bush, are atypical children?

A. Nine.

Q. Nine?

A. Yes.

Q. Now—

A. Just a minute; that was not correct. There are none of those 27. The enrollment of the atypical class is nine, but none of those 27 come from that class.

Q. That is, the 27 are in the regular grades?

A. Yes.

Mr. Gilligan: The atypical class is only nine?

The Witness: That is right.

345 (Witness excused.)

346 Thereupon Mrs. LENA A. MURRAY HODGE was called as a witness by and on behalf of the defendants and,

having been previously duly sworn, was examined further, and further testified as follows:

Direct examination:

The Court: Sit down, please. You have been sworn.

Mr. Houston: I simply would like to note that I am not calling Mrs. Hodge for the reason that I want to call her independently as my own witness.

By Mr. Urciolo:

Q. Mrs. Hodge, in your direct examination, you stated that you were of the white race.

A. I did.

Q. And that you could always tell when a person was of the white race or of the colored?

A. I think I said "I could usually tell."

347 Q. Well, then, Mrs. Hodge, you don't know, then, for sure, whether all of these plaintiffs are white or all these defendants are negroes?

A. I certainly know all my plaintiffs are white; I am sure of that.

Q. You are sure of that?

A. Certainly, I don't see why I shouldn't be.

Q. Well, may I ask you this question: Am I of the white race?

A. You are Italian, and they are classed as whites, I understand.

Q. Answer my question.

A. I would say that you are white.

Q. You would say that I am white?

A. Yes.

Q. Mr. Houston, would you stand up?

Mr. Houston: Yes (standing up).

By Mr. Urciolo:

Q. Is he of the white race?

A. No, I don't think so—sure not.

Q. You are sure that Mr. Giancola (indicating) is he of the white race?

A. He is an Italian, and of the white race.

Q. Mrs. De Rita, would you stand up?

(Mrs. De Rita arose in the court room.)

348 A. She is of the white race; she is also white.

Mr. Urciolo: Would you stand up (speaking to woman in rear of court room).

The Court: Stand up, please.

Mr. Urciolo: Is she of the white race?

The Witness: I am not sure.

By Mr. Urciolo:

Q. Now, you can either tell or cannot tell.

A. I told you that I cannot always tell.

Q. Cannot always tell?

A. I told you that.

Q. But these other people—you are certain?

A. I was certain, yes.

Mr. Urciolo: That is all, Mrs. Hodge.

Cross-examination.

By Mr. Houston:

349 Q. Mrs. Hodge, since you don't know what this lady is (indicating lady in rear of court room) at the moment, if she bought you would have no objection whatsoever?

A. Not until I found out definitely what she was.

Q. Then, although she had not—

A. What?

Q. —although she had not changed a bit in her conduct or anything, if later you heard she was a negro, you would object?

A. I certainly would.

Q. Although she would be the same one and you would not object, and on appearance you can't tell whether she is white or colored?

A. I would not object until I found out.

Q. It is the label of "negro"?

A. Not entirely, it is the color—yes, the label.

Q. It can't be the color, because you can't tell whether that lady is white or colored.

A. Yes.

Q. So it is the label?

A. Yes.

Mr. Urciolo: Mrs. Hodge, in other words, if I am labeled negro and I want to move into one of those houses you would ask that I be put out?

The Witness: I would.

Mr. Urciolo: That is all.

. . . . .

350 Thereupon Mrs. VICTORIA DE RITA was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Mrs. De Rita, you testified at the deposition in Mr. Middlemiss's office?

. . . . .

351 Mr. Urciolo: . . . I am reading your testimony that you gave at the deposition.

Mr. Gilligan: Suppose you designate the word "Question" so that she will understand.

Mr. Urciolo: All right.

"Q. Now, at the time you moved in down toward Second Street, on that same square, were there persons down there that looked like Negroes?

"A. No.

"Q. None down there at all?

"A. None down to 152 Bryant Street.

"Q. She said there were none down to 152 Bryant Street.

"Now, after you get to 152 they are all Colored?

"A. Yes, yes; 152 all the way to Bryant Street no Colored—

"The Interpreter (interposing): Don't get nervous.

"By Mr. Houston:

"Q. How do you know?

"A. Well, because I see when I move over there no Colored people live in the block.

352 "Q. Well, you know that you cannot always decide whether a person is Colored or not by just looking at the skin, don't you?"

"A. I cannot understand now.

"Tell me, Mrs. Giancola——"

Mr. Gilligan (interposing): Mrs. Giancola was the interpreter, sir.

The Court: Well?

Mr. Urciolo (continuing): "The Witness (after conversing in the native tongue with the Interpreter): Yes, yes.

"The Interpreter: She said 'Yes'; she said she can tell.

"By Mr. Houston:

"You can always tell?

"A. Sure."

By Mr. Urciolo:

Q. Now, Mrs. De Rita, are you white?

A. Yes.

Q. Am I white?

A. Yes.

Q. Is Mr. Houston white?

A. No.

Q. He is not white?

A. No.

Q. Is Mr. Marchegiani white?

A. Yes.

353 Q. Is that lady in the black hat (indicating lady in rear of room) white?

A. I don't know, I can't tell you 'cause I don't know.

Q. Therefore, do you retract the statement that you made in your deposition that you can always tell? In other words, sometimes you can be mistaken.

A. Might be.

Mr. Urciolo: That is all.

Cross-examination.

By Mr. Houston:

Q. Mrs. De Rita, since you can't tell what that lady is, you would have no objection to her moving in the block?

A. No.

Q. But suppose you found out later that, somebody said she didn't say it, but somebody said she was colored, would you then object?

A. No.

Q. So that if she doesn't look like colored, you wouldn't mind; is that right?

A. No, I mind, too.

354-357 Q. Well, I said you can't tell what that lady is, whether she is white or colored; is that right?

A. That is right.

Q. Now, since you can't tell whether she is white or colored, you would have no objection to her moving in the block, would you?

A. I don't know what you mean; I can't understand that.

358 Mr. Gilligan: Maybe Mr. Urciolo himself could interpret.

Mr. Urciolo: In that event, I will be satisfied.

The Court. All right. You will be sworn as an interpreter.

Mr. Urciolo: I have been sworn already.

Mr. Houston: You take another oath as interpreter.

359 The Clerk: If Your Honor please, I do not seem to have the interpreter's oath here.

The Court: Perhaps I can give it to Mr. Urciolo.

Do you solemnly swear that you will correctly interpret all questions propounded to this witness and correctly interpret her answers thereto, so help you God?

Mr. Urciolo: I do.

Mr. Houston: Sit there, and let's make sure no advantage is taken of the witness.

May I go back over my examination?

The Court: We have not had any trouble as to that.

(Whereupon, the witness was asked the following questions which were interpreted to her by Mr. Urciolo, in Italian, and her answers in Italian were, in turn, translated into English by Mr. Urciolo, as follows:)

Mr. Houston: Since you could not go up to the lady and ask her whether she is white or colored, would you then

have any objections to her moving in the block since you can't tell whether she is white or colored?

Mr. Urciolo: No.

The witness says no.

By Mr. Houston:

Q. Then, your objection is not to the color of the person but to the fact that the person is labeled "negro"?

The Court: Do you understand that?

360 The Witness: No.

Mr. Urciolo translates question.

The Witness: What do you mean there, you explain it?

By Mr. Houston:

Q. Mr. Urciolo will.

A. That is right.

Mr. Houston: That is all.

The Court: Any questions?

Mr. Gilligan: I would like to ask just one question.

The Court: All right.

Further cross-examination.

By Mr. Gilligan:

Q. This lady back here (indicating), if she moved into your block where there are covenants, because you do not know whether she is white or black, after she moves in, if you learn that she is a negro, would you then object to her presence in your block?

A. (Interpreted:) No.

Q. You would not object?

Mr. Gilligan: All right.

Mr. Houston: That is all.

Mr. Gilligan: You are sure you understood the question?

The Witness: Well, you might please tell again.

Mr. Gilligan: Make sure of the point, now; have you got it, Mr. Urciolo?

361 Mr. Urciolo: You can repeat it if you wish. There are others that understand in the room. Do you want to repeat it so that there won't be any question?

(Mr. Urciolo then translated the question of counsel to the witness.)

The Witness: Yes.

Mr. Gilligan: That is all.

Mr. Houston: Wait a minute, he raised a question.

The Court: Wait a minute. What is the difference?

Go ahead with the questions, Mr. Houston.

Further cross-examination.

By Mr. Houston:

Q. How would the lady have changed, in what manner would the lady have changed which would make her objectionable after you had, to your satisfaction, found her to be a negro, from what she was before you found her out to be a negro?

A. (Through Mr. Urciolo:) In the sense that she wants that block all white.

Q. So that it is the label "negro" that you object to?

A. (Translated:) A little of everything.

Q. What does she mean by "A little of everything"?

A. (Interpreted:) She said because they are colored, face is colored, and because they have black blood.

Q. I thought you just said you couldn't tell what they were, whether white or colored.

362 The Court: You have assumed that she later found it, have you not?

Mr. Houston: That is why I raise the question of face.

Mr. Gilligan: If Your Honor please, she said "A little of everything".

Mr. Houston: That is right, don't forget where it came from. In what respect has the lady changed?

Mr. Gilligan: Ask her that.

Mr. Houston: We have asked her that.

The Court: Find out.

(Question interpreted by Mr. Urciolo.)

The Witness (Interpreted): Because before I don't know. After I find out I am sure negro.

Mr. Urciolo: She said before she found out she was not certain, and after she found out she is sure she is colored.

Mr. Houston: That is all.

(Witness stands aside.)

363 Thereupon MARY M. MARCHEGIANI was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Mrs. Marchegiani, can you always tell whether a man is white or colored?

A. No.

Q. You cannot?

A. Maybe some cases, where I could be mistaken.

Q. In other words, you may be mistaken in your complaint that you filed?

A. Well, so far as the case goes, right now I am not; far as I am concerned, Mr. Hurd admitted in a letter that he was colored, he signed the letter.

Q. Mrs. Marchegiani, if I admitted in a letter to you that I was colored, would you think I was?

A. Would you admit being a negro if you wasn't?

Q. Answer my question.

A. Repeat the question.

Q. My question was—If I admitted to you in a  
364 letter that I was colored, would you then label me as colored?

A. Yes, I would.

Q. In other words, all a person has to do is write a letter and state that he is white or colored and that makes him whatever he states?

A. Sure, he states it.

Q. If Mr. Houston writes a letter that he is white, would you then say he is white?

A. Until I seen him.

Q. Then any case, you would want to see him?

A. Of course, I would have to see for myself. We saw that Mr. Hurd was colored.

Q. I see. All right. Is this man colored in the first row here (indicating)?

A. I would say he was colored, yes.

Q. Is this man colored (indicating)?

A. No.

Q. He is white?

A. He is white.

Mr. Houston: Referring to whom?

Mr. Urciolo: That gentleman (indicating).

The Witness: He is white.

By Mr. Urciolo:

Q. The gentleman with the eyeglasses?

A. He is white—Mr. Hodge.

365 Q. This lady in the brown dress (indicating)?

A. I say she is colored.

Q. This lady with beads (indicating)?

A. If you please, I would like to have her take her hat off and come so I can look close.

The Court: Come up here.

The Witness: After all, she is quite far.

The Court: Come up here, please. Come around to the side here (indicating).

(Unidentified woman from back of courtroom approaches and stands by side of witness chair.)

The Witness: I would say she would almost pass for colored.

By Mr. Urciolo:

Q. What is she, white or colored?

A. She could be mixed.

Q. If she is mixed, what is she?

Mr. Gilligan: That is a legal question, if Your Honor please. "If she is mixed, what is she?"

Mr. Urciolo: I think that does not call for a legal conclusion at all.

The Court: Sustained.

Mr. Urciolo: Sustained?

The Court: Yes.

366 By Mr. Urciolo:

Q. Did I understand you to say she was part colored?

A. I said she could pass for part.

Q. Part what?

A. Colored or white.

Q. Pass for white or colored—

A. To me her hair indicates that she has colored blood in her.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Houston:

Q. What would you do if a woman who passed for white or colored moved into the block, and that is all you know, would you go up to her and ask what she was?

A. No, not until I had a little more chance to see her husband, whether he was lighter or darker, or her children, they usually are the same color.

Q. Suppose her husband was light?

A. Someway or other, it always shows up, their social-ability with their friends.

Q. I see.

A. And part of it—

Q. The point of it is, the friends now, is it the friends you object to, or what?

367 A. No; I mean it would indicate sooner or later, if they are colored or white.

Q. Do you know that there are plenty of negroes that have whites visiting them; don't you?

A. No.

Q. You don't know that?

A. I know that they usually stick among themselves when it comes to friendships.

Q. You know plenty of negroes have whites visiting them?

A. Yes, probably so, but not all white.

Q. What do you mean, "not all white"?

A. For instance, if—

Mr. Gilligan: I don't see the relevancy of the question, ut I have to object to it.

The Court: Let us hear the answer.

The Witness: If the woman is colored, or if she is one that is all white as to skin, she would have some colored friends.

By Mr. Houston:

Q. But the point is, to a lady like that, you wouldn't raise any objection to her going into the block, first?

A. Not until I was definite, no.

Mr. Houston: All right.

368 Redirect examination.

By Mr. Urciolo:

Q. Mrs. Marchegiani, what would you do, say, if Mr. Marchegiani was a widower, and married a very dark woman?

A. If Mr. Marchegiani became a widower, I would not be here to tell it.

Q. Sorry. I meant Mr. Giancola.

A. What was that again?

Q. Mr. Giancola.

A. State the question.

Q. If he married a very dark woman who seemed to be a colored woman, let's suppose he married a woman who had some colored or negro blood in her, would you object and ask that they both move or just one?

A. Well, I wouldn't know, because, after all, I never come across a case like that.

Q. What would you do?

A. I don't know what I would do, and that is my answer.

Mr. Urciolo: No further questions.

Mr. Griligan: No questions whatever.

369 Thereupon BALDUINO GIANCOLA was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. In this case, if you don't understand a question, just say you don't understand, and we will see that you know, that the matter is interpreted. Mr. Urciolo has been sworn as an interpreter.

A. All right.

Q. How many persons have moved in this neighborhood since you first bought in the 20 houses that are under covenant?

A. I don't know.

Q. Can you give us any idea?

A. Three, I know.

Q. All right; who are those three?

A. I don't know the name of them.

Q. Are they Italians, Assyrians, or what?

A. Colored.

Q. What?

A. Colored.

Q. I mean, outside of colored.

370 A. I don't know.

Q. Since you first bought on Adams Street—on Bryant Street, how many persons, except colored persons, have moved into the 20 houses?

A. Three, I think.

Q. Who are they?

A. I just tell you I don't know the name of them.

Q. Where did they move in?

A. (Nodding head.)

Mr. Houston: I don't think he quite understands.

The Witness: Yes, I do; I don't know the address, I understand.

The Court: He understands the question, but doesn't know the address.

By Mr. Houston:

Q. You understand I am not talking about colored, I am talking about others than colored—how many persons other than colored moved in to any of the 20 houses on Bryant Street since you bought?

A. I don't know how many there move in.

Q. Do the colored people keep up their houses nicely?

A. Yes.

Q. Do more colored children play around in the neighborhood now than they did when you first went there?

A. Yes.

371 Q. Has Adams Street in back of you become almost solidly colored since you moved there?

A. Think it is.

Q. Now, what did you say you paid for your house?

A. 45.

Q. How many children do you have, Mr. Giancola?

A. No children.

Q. How many persons do you visit in the neighborhood?

A. Mr. and Mrs. Hodge.

Q. What?

A. Mr. Hodge, DeRita, when Marchegiani was there.

Q. All right. Do you visit any of the new persons who have come in there?

The Court: You will have to say yes or no.

The Witness: No.

By Mr. Houston:

Q. You don't even know who the new persons are that have come in?

A. No, sir.

Mr. Houston: All right, as far as I am concerned. That is all I want to ask Mr. Giancola.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Giancola, you don't know who has moved into the block in the last year?

372. A. Three, that is all I know.

Q. Just three people?

A. Moved.

Q. Have you seen them?

A. I see them outside, a couple of them, that is all I know.

Q. Did they look light or dark.

A. Dark.

Q. Are they, in your opinion, white or colored?

A. Colored.

Q. Let me ask you this question—I am referring to the three persons other than colored people that you stated moved into the block, and you say they look colored.

A. Yes, these colored.

Mr. Urciolo: He evidently does not understand.

Mr. Gilligan: He is puzzling him with that last "other than the three colored persons". You have referred to

three others that moved into the block and there wasn't any such testimony.

Mr. Houston: Beg pardon?

The Court: Can you answer the question?

Mr. Gilligan: Ask that again.

By Mr. Urciolo:

Q. I ask you this question: Besides the colored people who have moved in, in the last two years, have there  
373 been any other new occupants, owners or tenants, that moved into your block, that were not there before?

A. Yes.

Q. Now, that was my question—how many more or less?

A. Oh, might be two or three, something like that.

Q. Now, I asked you did they look very light or dark?

A. Well, they look white.

Q. Answer my question.

Mr. Gilligan: He did.

Mr. Urciolo: The question is, did they look light or dark?

The Court: The answer was, they looked white.

Mr. Urciolo: No, Your Honor.

Mr. Reporter, read the answer. I said, Did they look light or dark?

The Witness: White.

(Whereupon, the record was read by the reporter.)

(Witness excused.)

374 Thereupon CONSTANTINO MARCHEGIANI was called as a witness by and on behalf of the Defendants, and having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Marchegiani, I was talking to you about your new house at the time we cut off. Going back to that, what are the dimensions of your lot?

A. New house?

Q. Yes.

A. That is 50 by 199 on one side, and 181 on the other—

Mr. Gilligan: I object to any further questions about his new house because that is not in this case at all.

The Court: Sustained.

Mr. Houston: Do you wish to hear me?

I understood that it was 50 by 199 and 50 by 181.

Mr. Gilligan: Do you overrule my objection?

The Court: Sustained.

Mr. Houston: I asked if you wanted to hear me, and I thought you said no.

The Court: I do not care to hear you, because I do not see the relevancy of it.

375. Mr. Houston: That is what I wanted to find out.

Part of my case is against that showing—showing a change of neighborhood, showing him leaving the house that was old, the obsolescence of the property, and getting a new property.

Mr. Gilligan: Why not ask him about the obsolescence?

The Court: Very well, the objection is sustained.

Mr. Houston: Your Honor, I want to lay that foundation. Can I not ask him whether he would move back into the Bryant Street property?

The Court: The objection is sustained.

Mr. Houston: All right. Now, I say that that is important because I want to find out about his desire for the enforcement of the covenant and as to whether he moved because he wanted to get a better house or whether he moved for further reasons.

Is the objection still sustained?

The Court: Still sustained.

By Mr. Houston:

Q. Mr. Marchegiani, how many persons have moved into the neighborhood of the 20 houses on Bryant Street from the time you first bought?

A. Please repeat it.

Q. How many persons moved into Bryant Street, in these 20 houses, from the time you first bought until you moved away?

376

A. I am afraid I can't answer you that, because I can't check on it because I am working in the day and nightly—I can't see, naturally, who moves in or moves out.

Q. You pay no attention to your neighbors?

A. That is right.

Q. You did not pay any attention to your neighbors?

A. That is right.

Mr. Houston: I get the answer as "No, you do not". Is that right?

The Witness: That is right.

Mr. Houston: That is all I want to ask of the witness.

Cross-examination.

By Mr. Urciolo:

Mr. Marchegiani, you never bothered about seeing who moved in and who moved out?

A. That is correct.

Q. Well, tell me how did you know that colored people had moved in?

A. Well, I knew through my wife.

Q. You took her word for it?

A. That is right.

Q. Consequently, as of your personal knowledge you don't know whether they are white or colored?

A. Well, I never seen it. Of course, I can state nothing, you know what I mean, I never seen the person, any of the wives or husbands.

377 Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Gilligan:

Q. When you moved from your house on Bryant Street out into Maryland, did you do it because these negro families moved into Bryant Street?

Mr. Urciolo: That is objected to.

The Court: Objection sustained.

Mr. Gilligan: No further questions.

Thereupon PASQUALE DeRITA was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. You have been on Bryant Street now since 1940?

A. 1940, yes.

378 Q. How many persons have moved in, other than  
negroes, on Bryant Street, in the 20 houses, since  
you moved in?

The Court: All right, you (indicating Mr. Urciolo) interpret the questions and answers.

Mr. Urciolo (interpreting): Two other families?

The Witness: No, one, buy the house, I don't know the name, see?

Mr. Urciolo: One buys the house.

The Witness: I don't know the name, but last two years I don't know that, the man that buy the house there, white people.

379 (Mr. Urciolo addressed the witness in Italian.)

The Witness (through Mr. Urciolo): I don't know, I work, come back at nighttime. When I come back I can't see who move in or who live there. I come back nighttime when I work.

The Court: He has done more than answer the question now, certainly. He said one, as I understand it.

What is the next question?

Mr. Houston: When he goes to work and comes back at nighttime, he does not pay any attention to who lives or who does not live around him?

By Mr. Houston:

Q. You didn't pay any attention to who is in the neighborhood, you paid no attention to who was in the neighborhood?

(Question translated by Mr. Urciolo.)

A. I don't know, I come back when dark.

The Court: Any questions?  
Mr. Urciolo: I have one question.

Cross-examination.

By Mr. Urciolo:

Q. You didn't see colored people move in, yourself?

A. I know—I no see when they leave, I see they live there, I work, they move daytime, daytime I am going work myself, I work on other side, see. Daytime I work.

380 Mr. Urciolo: He said, Your Honor, that he did not see them when they moved in because they moved in during the daytime when he was at work.

By Mr. Urciolo:

Q. Did you see all three families, all four families, before you filed this suit?

Mr. Urciolo: I will interpret that for him.

(Question translated by Mr. Urciolo.)

A. (through Mr. Urciolo:) He said the only one he saw only colored family he saw before signing the complaint was in 116 Bryant Street.

Mr. Urciolo: I have no further questions.

Mr. Gilligan: No questions.

381 Thereupon LENA A. MURRAY HODGE was called as a witness by and on behalf of the Defendants, and, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mrs. Hodge, there was some question about the signing of the papers in the suit, in these suits, and my understanding is that the first suit is the suit that was brought against Hurd and everyone was at your house when Mr. Keefer — and then you said you signed this in a group?

A. Yes, sir.

382 Q. In the second suit, the suit brought against the Rows and Stewarts and Savages—

A. Yes.

Q. In that case—

Mr. Gilligan (interposing): At that time, I had to be out of town and turned the papers over to you.

The Witness: Yes, sir.

By Mr. Houston:

Q. To get the signatures?

A. Yes.

Q. Will you state what you told—state first to whom did you go to get signatures?

A. Well, I went to Mrs. Giancola; and Mrs. DeRita, and Mr. DeRita, and Mrs. Luskey, Mr. Luskey, and Mr. and Mrs. Marchegiani, of course, were not in the city, and I talked to them on the telephone.

Q. In the case of the Marchegianis, the one took the papers out to the other?

A. Mr. Marchegiani came in the evening, from the office, from his work, and he took the papers out and Mrs. Marchegiani signed it and he returned it to me the following morning.

Q. Will you state to the Court what you said to these people, especially these new Italian people when you came to them to present it to them to get them to sign it?

383 A. I presented it to them, in this case, these people had bought these houses, and told them that this was an injunction,—yes, an injunction, an injunction to prohibit them from moving in until this case was settled.

Q. Did you tell them that you were doing this for their benefit?

A. I did.

Q. Did you say to them, "Now—"

Mr. Urciolo (interposing): If Your Honor please, I wish Mr. Houston to ask the witness who "them" is.

By Mr. Houston:

Q. Whom did you say, "I am doing this for your benefit" to?

A. Different ones I was talking to, when I was in their homes, not Mrs. Luskey, not Mrs. Marchegiani,—Mrs.

Giancola, and he was out when I was there in the afternoon, and Mr. and Mrs. DeRita, I made it plain to them, Mr. Houston.

Q. That you were doing that for their benefit?

A. I did.

Q. Was Mr. DeRita there at first, or did you have to go back?

A. I went over to see Mrs. DeRita.

Q. Then there is Mr. DeRita, and Mr. Giancola and Mrs. DeRita?

A. And Mr. Luskey and Mrs. Luskey.

Q. Now, how old is Mr. Luskey?

384 A. 75, I think, Mr. Houston.

Q. And I understand that Miss Helen Skinner—

A. Miss Helen Skinner, 132.

Q. How old is she?

A. I would say she is up in her 70's, around approximately there.

Q. Mr. Skinner, next?

A. Well, he is older than his sister, I think.

Q. Is it "Miss"?

A. Miss Helen Skinner and Mr. Melvin Gibbs Skinner.

Q. He is older than his sister?

A. Yes, he is.

Q. And Mrs. Pyles, how old is she?

A. That I can't answer; I would say that she is a woman, well, probably 68 years old.

Q. She is the lady who is blind?

A. Yes, she is blind.

Q. And Mr. Wrightsman?

A. Mr. Wrightsman is about 81.

Q. Now, do any of the second generation of the original families live on the block except the Lanigan girl?

A. No, they do not.

Wait a minute, Mr. Houston, Mrs. Johnson lives at 114, she is a co-owner with her daughter, but her daughter lives with her.

385 Q. Was she an original owner?

A. For a good many years, I don't know who the original owners were, but Mrs. Johnson has lived there, well, for, I would say, 18 or 20 years.

Q. But not before then?

A. Not that I know of.

Q. So that so far as you actually know, and can identify

the original owners, no second generation of the original owning families lives on the block except Miss Lanigan, is that right?

A. That is all.

Q. Now, how many persons other than negroes have moved into the block in the last five years, would you say?

A. Well, Mrs. Johnson and her daughter and husband, Mr. and Mrs. Delavigne have moved in, well, since Mr. Hurd moved into that house. They were away and then they came back, went back into their house, and Mr.——

Q. Has Mrs. Lanigan moved back yet?

A. She never has left.

Mr. Gilligan: She hasn't finished.

The Witness: No, I have not.

Mr. Houston: Excuse me.

The Witness (continuing): Mr. and Mrs. James Seigh, they are Assyrians, they are next door to me at 138.

386 By Mr. Houston:

Q. All right.

A. And there is a Mr. and Mrs. Dunn who moved from Adams Street over there about three years ago, at 140.

Q. Do you mean they moved from 140 Adams?

A. I don't know what their number was there, they have moved.

Q. Into 140?

A. Into 140 Bryant.

Q. Owners or renters?

A. Renters; that is, Mrs. Pyles' home; and then there is Mr. Perdue, now what is his first name. I don't know—It is P-e-r-d-u-e.

Q. Renter or owner?

A. Owner.

Q. Do you know where he lives?

A. At 146, just this side of the Luskeys.

Q. All right, any more?

A. No, sir. Oh, wait a minute; there is a family at 152, and their name is Amoia, I think.

Q. Are they Italians?

A. Yes, they are Italians, they have been there about two years, I think, two and a half.

Q. Mr. and Mrs. Amoia at 152?

A. Yes.

387 Q. Bryant Street, and they are—do you know whether they are renters or owners?

A. Renters.

Q. Mr. Perdue, do you know when he moved in?

A. I think possibly two years, I don't think he has been there any longer, not much, at any rate.

393 Q. Mrs. Hodge, in your knowledge — — — neighborhood, from your knowledge of the houses, types of houses from North Capitol Street west, from Rhode Island Avenue north, over about as far as Second, you are generally familiar—

The Court: Do you have a map?

(Map passed to Court.)

394 By Mr. Honston:

(Continuing:) Repeating, Mrs. Hodge, you are familiar with the houses, types of houses from North Capitol Street west, Rhode Island Avenue north, up to the filtration plant?

A. Rhode Island Avenue north, toward me?

Q. That is right, up to the filtration plant and west as far as, let us say, Fourth Street. Those are all generally speaking what you might call houses of, say, from six to eight or nine rooms, would you not say?

A. Yes, I think they are, most of them.

Q. And at the time that white people were living in them, on the whole again, they were occupied by what you might call, so far as income is concerned, a lower middle class income group.

A. Well, I think for the greater part of them, they were.

Q. Now, getting—

A. (Interposing:) Of course, the majority were.

Q. Getting down to specifically Bryant Street, all of the houses on Bryant Street between First and Second, those under covenant, those not under covenant, are the small house, say from six to eight rooms, in general?

A. Yes, they are.

Q. And during the time that white persons were living

395 on Bryant Street from First to Second, both in the houses under covenant and in the houses not under covenant, they were of the lower middle class income group, were they not?

A. Well, yes, I think the most of them were, Mr. Houston.

Q. Now, of course, you understand that there is no idea of putting it on a personal basis of money, but I am striving to establish a bracket.

A. As to practically their income there.

Q. An income bracket?

A. Well, they were about—well—lower to a medium, I would say, income bracket in those houses there, so far as I can know about them:

Q. Would you say then that the average is about lower or lower medium or medium income group bracket?

A. Yes.

Q. Would you say that the financial limit of the bracket say would be somewhere between \$1500 on the bottom and about \$5000 on the top?

A. Yes, I think that would be just about right, approximately \$1200, Mr. Houston, for the bottom, would be better.

Q. \$1200 as to the bottom?

A. Yes.

Q. And \$5000 top?

A. Yes.

Q. That would be the household income, including all members of the family?

A. Yes, it is.

396 Q. So far as you know, has there been any decline in the rents in the covenanted houses since persons supposed to be of negro blood, or negroes, moved in?

A. Well, let me see—I can't answer that; only in one or two instances where I really know.

Q. All right.

A. But, I know of two houses that, well, have rented for \$48, I think, and one for about \$42.

Q. Which house was that, Mrs. Hodge?

A. The one right next to me that Mr. Savage occupies,

134.

Q. 134? I don't think you understood the question. I was not asking what the rents were, I was asking whether you knew of any reduction in rents.

A. No, I do not, because I don't know what they rented for.

Q. Has there been any increase in rents?

A. That I can't tell you because I don't know.

Q. Do you know—you said you knew what the rents were on two houses,—134, the Savage house, is renting for what?

A. I think that was \$47.50 or \$48, along there. I can't be specific, but I know it was under \$50.

Q. And the other house?

A. I think the other one is 132, I think that is around in the same bracket. Those are the only two that I  
397 am really sure of.

Q. And by "bracket" you mean under \$50 as a top?

A. Yes, under \$50.

Q. And when were those brackets enforced?

A. What?

Q. How late, to your information, were those rentals enforced?

A. Well, they had been—134, practically,—I mean 32, practically always paid that, and after Mr. McCurdy sold 134, I think that rent has remained just about the same. He has been gone I guess about five or six years, something like that.

Q. Then Mrs. Hodge, if you made the statement in the complaint, and swore to it, that the occupancy by negroes would be absolutely ruinous to the real estate owned by the plaintiffs, you were not referring to market values or marketability, were you?

A. In a way, yes; because I feel, my house would not be worth as much as it is now if it all went in, colored people went in there, and I think that would depreciate the value of all of them.

Q. Now, why do you say that?

A. I think, Mr. Houston, in a majority of the cases their homes are not kept up as well; the majority, understand, I am saying,—as possibly my house is, and naturally, if homes are not kept up, I would say the market value  
398 would go down and, of course, if that went down, mine naturally would have to go down, I would think.

Q. Now, have you any evidence that the homes the negroes are now occupying are not as well kept up as they are by the white persons?

A. No, I have not.

Q. Are you basing your statement on fact, or basing it on your feeling about the matter?

A. Well, I am basing it not only on my street, but the general neighborhood there. What I mean is possibly beyond Fourth Street around through in there.

Q. Beyond Fourth Street?

A. No, between my place and Fourth, I know what the condition of those houses has been.

Q. Let's take the houses over on Adams Street, where the negroes first moved in,—on porches,—remember that, between the Flagler Place and Second?

A. Right back of me, you mean?

Q. Well—

A. (Interposing:) It is not right back of me. They are the only ones that have porches.

399 (A map just identified at the bench, was marked "Defendants' Exhibit No. 2" and received in evidence.)

Mr. Gilligan: I think it might be well, if your Honor don't mind, to let Mrs. Hodge come around.

(Witness Mrs. Hodge approached the bench.)

Mr. Houston: If it please the Court, I ask that this map which has a listing at the top "Howard University" in the upper left-hand corner, "Reservoir grounds" in the upper right-hand corner, be marked as Defendants' Exhibit No. 2.

This was used about two or three years ago in another case involving, at the time, Adams Street in the 100 block, in which I was counsel for the defendants, Mr. Gilligan was counsel for the plaintiffs, and at that time we marked it with a legend which appears at the bottom of the map, and it is as follows—the spaces indicated in brown represent negro occupancy, the spaces represented by a sort of vermillion represented covenanted occupancy—

The Court: Perpetual?

Mr. Houston. Perpetually, covenanted houses. The spaces marked in brown, Your Honor, are spaces occupied by negroes, without covenant.

The Court: No covenant?

Mr. Houston: Yes, sir, the spaces occupied in ver-  
400 million represent houses occupied by negroes or  
others on which there is a covenant and on Adams  
Street is represented, you see, these houses (indicating)  
which at that time were in litigation, then the houses in  
green are white houses on which there is a perpetual cove-  
nant. At that time we were engaged in the matter, that  
is—

The Court: Wait a minute. There is a perpetual—

Mr. Houston: That is, houses occupied by whites on  
which there is a perpetual covenant. Here are the green  
houses on Bryant Street which are now the subject of this  
suit; this is going north toward the reservoir (indicating);  
this is south toward Rhode Island Avenue; then, I think  
this last in yellow (indicating)—

The Court: White, without any covenant?

Mr. Houston: I see very few of those, and this is the  
school, incidentally, that we were talking about (indicat-  
ing) the Gage School.

Mr. Gilligan: It looks to be brown.

Mr. Houston: No, that is incorrect, they may have made  
it for that, it was meant for yellow.

Mr. Gilligan: At any rate, that is the Gage School for  
white children.

Mr. Houston: For white children, yes.

Now, going back, Mrs. Hodge—

401 The Court: You were asking about Adams Street?

Mr. Houston: Oh, yes, I remember now.

By Mr. Houston:

Q. These houses here (indicating) on Adams Street  
are occupied by negroes, without any covenant. These  
houses were the ones with the white porches, do you re-  
member them?

A. Yes, wait a minute, that is—

Q. Adams Street.

A. Yes, I remember them now.

Q. Would you say that these houses are not kept up  
just as well as any house?

A. Mr. Houston, I can't say because I tell you I have  
very, very seldom gone back there. I cannot answer  
that, truthfully.

Q. Now, Mrs. Hodge, these houses down here (indicat-

ing) where the negroes are, down toward Second, are they not kept up as well?

A. No, not at all.

Q. Are some kept up as well as the white houses?

A. Yes, some of them are.

Q. Now, wouldn't you say that—would you be willing to say that there is no negro house which is worse than the worst white house along there?

A. I would frankly say there is not. I am telling the truth about that, there is not.

Mr. Gilligan: Aren't you telling the truth about everything?

The Witness: Oh, yes.

Mr. Houston: She means what is favorable and unfavorable,—I understand.

By Mr. Houston:

Q. So that, Mrs. Hodge, if you got a desirable respectable type of negro in that block of houses, so far as marketability and taking care of his property is concerned,—no, there is no more reason to think that he would not take care of his property than the same self-respecting white person.

A. I presume not.

Q. So that in saying they would not take care of their property, I mean to say that that doesn't necessarily follow, I mean, as a result.

A. No, not as a rule; I think generally it does, though.

Q. Take Mr. Hurd's house at 116. You have passed it, have you not?

A. Yes.

Q. Is the Hurd house being kept up as well?

A. It is, it is being kept up very nicely.

(At this point counsel and the witness left the bench and resumed their seats at the counsel table.)

403 By Mr. Houston:

Q. The way that the Hurd house is being kept up, it certainly would not cause your house to depreciate on account of the appearance of the houses in the neighborhood, would it?

A. No, not so far as appearances are concerned.

Q. Now, when we are talking about marketability, I am speaking of the price that you could get for your property, and I mean that price regardless as to who it comes from, colored or white.

Now, on that basis, would you say that negroes going into the block would be absolutely ruinous to your property from the standpoint not now of occupancy, but of sale?

A. Well, I think it would to a certain extent.

Q. Have you anything upon which you can make or show the reasons for that statement?

A. No, that is just my own idea, Mr. Houston.

Q. Now, speaking again from the standpoint of your personal feelings about residence, speaking once again from a standpoint of marketability and values, it is just your own idea again that negroes coming in would be injurious and depreciative of the values of the house, your house, the market value?

A. Yes, I think it would.

Q. Do you have any more on which to base that  
404 conclusion than you had as regards the sales value?

A. No, I have not.

Q. Now, you testified that you had had no trouble whatsoever with the negroes on the block, either in the covenanted houses or in the houses not under covenant.

A. No, not a bit, I did testify that.

Q. Now, your peace of mind has not been disturbed by the presence of the negroes in the houses not covenanted?

A. No, it has not.

Q. And you stayed on in your house after the white people moved out of the houses not covenanted and the negroes moved in, and you have not been disturbed in mind?

A. No, I have not.

Q. Now, in view of the fact that you have not been disturbed by the presence of negroes in houses 154 on down, can you state what is it that makes you disturbed so far as the Hurd occupancy is concerned?

A. Well, Mr. Houston, I feel that way—as far as the colored coming in, I have nothing against them having their home, but it does, in a way, take away from the—well, you might say the sociability of the white people in the white people in the neighborhood, that is, in our block. That is the only reason that I can give.

Q. All right. How many young children are there in

the block, in the white families, as far as you know,  
405 Mrs. Hodge?

A. Let's see, there is one—

Q. Let's go by houses—114?

A. 114.

Q. That is the Johnson's?

A. There is one boy about seven years old, I think,  
six or seven, possibly six, I'd better say six.

By Mr. Houston:

Q. 116 is the Hurd house?

A. Yes.

Q. 118 is now the Rowe house?

406 A. Yes.

Q. 120?

A. No small children there.

Q. 122?

A. No.

Q. 124?

A. Let's see, that is the Marchegiani's house and there  
is a little girl there, possibly five years old, as near as I can  
guess.

Q. 126?

A. Mr. Houston, Mr. Pearson's son and a daughter, I  
don't know whether they live there or not, but there are two  
children there the best part of the time, but whether or not  
they live there, I can't say.

Q. How old are they?

A. Well, about seven and eight, I think, I would judge.

Q. They are the grandchildren?

A. Grandchildren of Mr. Pearson.

Q. 128?

A. 128, that is the DeRita house, they have a girl about  
nine.

Q. 130?

A. No children there.

Q. 132?

A. No children.

407 Q. 134—let's see, that is the Savage house. 136?

A. No children.

Q. 138?

A. A little boy, about five and a half.

Q. Whose house is that?

A. That is Mr. James Seigh.

Q. Do you happen to know how he spells that?

A. S-e-i-g-h, that is an Assyrian.

Q. And 140?

A. Well, there are girls in there, around 15, 16 or so, I think, high school girls.

Q. How many, do you know?

A. Two.

Q. Whose house is that?

A. That is where Mr. and Mrs. Dunn live.

Now wait, there is a daughter there that has recently come, she has a baby about four months old.

Q. That is at the Dunn's house?

A. Yes.

Q. 142?

A. That is where the Windgroves live, they have a girl around 14 and a boy, I would say, around 11.

Q. Does the girl go to high school?

A. Yes, she is in high school.

408 Q. And the boy?

A. Well, —

Q. Is he in Junior Hi?

A. He is in grammar school, he is at the Gage, now.

Q. Gage?

A. Yes.

Q. All right. 144.

A. That is Perdue's home. Yes, they have a little girl six, and a boy.

Q. Mr. Urciolo tells me the Dayton's live there.

A. Oh, yes, 44, that is Dayton's house, I beg pardon.

Q. Are there any children there?

A. No, you asked me 42, didn't you?

Q. No, I had not gotten 44, but had gotten 42, there that was Windgrove.

A. They have a girl and they have a boy there.

Q. Going to Gage School?

A. A boy there around 13 or 14.

Q. Excuse me, I had already put down that 142 was the Windgrove house. There is a girl there?

A. There is a girl in high school.

Q. And a boy at the Gage school around 11?

A. Yes.

Q. Is there another boy there?

A. No.

409 Q. Now, 144?

A. No children there.

Q. 146 now?

A. That is the Perdue's house, and they have a little girl about six and this boy I would say is very close to 14.

Q. Is he in high school?

A. I can't tell you, Mr. Houston. I think he is in Junior High.

Q. 148?

A. No, no children.

Q. 150—that is Stewart. Now, 152?

A. Well, there are two children,—three there, but I don't think the older one of the boys goes to school. He is an older boy, 19, or possibly 20, and there are two girls about 16 or 15, and about 13, I would say. I am not giving it to you absolutely correct, but that is as near as I know as to what the ages are.

Q. There is a boy, nearly grown, you said?

A. The oldest one is nearly grown.

Q. Who works?

A. I would judge so.

Q. Well, who works as far as you know?

A. As far as I know.

Q. Now,—

410 A. (Interposing:) Mr. Houston, I have omitted that in the Perdue home, they have roomers there, and there are two girls, high school girls.

Q. Roomers?

A. I think it is Mrs. Perdue's sister and her two daughters.

Q. There are four children there, then?

A. Yes, but not in the Perdue family entirely.

Mr. Gilligan: If your Honor please, I would like to ask at this time whether this is part of the proof that you propose to offer in connection with public policy?

Mr. Houston: No, this is proof on change of neighborhood. I am just developing the course of the neighborhood, and it seems to me that one of the incidents of the vitality of the neighborhood is the number of children coming along in the second generation.

Mr. Gilligan: I would like to say, please, that the courts have definitely and unequivocally upheld the restrictive

covenant, regardless of whether or not there were children in the houses or older or younger people. The only thing that the courts are concerned about is,—is there a covenant has it been violated, and has there been such a change in the covenanted neighborhood as to justify it—no question as to whether there are children or older people, whether colored people have infiltrated in sufficient number to say that it would not be equity to enforce it, I think that the question is out of line for that reason, it is a subtle question.

The Court: The Court thinks it is proper, at least showing the character of the neighborhood.

Mr. Gilligan: Character?

The Court: Yes.

You may proceed (addressing Mr. Houston).

By Mr. Houston:

Q. I think we were back on the Perdue house and you told me that there were additions there, making four children.

A. Yes.

Q. That there were two high school children of the roomer, that you think—

A. I know that she is Mrs. Perdue's sister.

Q. She is identified to you as Mrs. Perdue's sister?

A. Yes, identified to me as Mrs. Perdue's sister.

Q. Now, we are back at 152, that is the Amioia's?

A. That is where I told you that the older boy—

Q. That is the Amioia's?

A. Yes.

Q. They are Italians, are they not?

A. Yes, sir.

Q. And I was down to the boy nearly grown who worked, as far as you know, and there are two more girls?

A. Where? The Amioia house?

Q. Yes.

A. Two daughters.

Q. To the best of your knowledge, are they high school girls, or grammar school girls?

A. Well—

Q. As far as you can judge. "Teen" age girls?

A. Yes, they are teen age girls.

Q. Now, that winds up, as far as you know, the white children in that particular segment of the block?

A. Yes.

Mr. Houston: I think that is all.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, do you happen to know what Mr. Dayton pays, how much rent Mr. Dayton pays?

A. No, I do not, Mr. Urciolo.

Q. Mrs. Hodge, in view of what Dr. Cooper said yesterday morning, does it cast any doubt upon you as to whether some of these so-called white persons in the block with dark skins, that you may be mistaken as to whether they are exclusively of a white race, or not? I am referring particularly to the Assyrians, Mr. Amioa, Mr. Giancola—

413 A. No, it does not. I still say that they are white. It doesn't cast a bit of doubt with me but what they are white.

Q. Now, let us suppose that Mr. Amioa, Mr. Seigh, or Mr. Giancola, were to discover they had some colored blood in them.

The Court: Are you asking a hypothetical question?

Mr. Urciolo: I don't think it is hypothetical, your Honor.

The Court: You are including facts that have not been testified to, and she is not an expert.

Mr. Urciolo: Well, the point is this, your Honor: She has testified—

The Court (Interposing): I assume that you are going to ask her opinion.

Mr. Urciolo: No, I am not. She has testified that she can always tell, and we had testimony to the effect that if later on it was found out if a person moved in who seemed to be white and later on it was found out that that person was colored, then Mrs. Hodge would bring an injunction to evict those people.

Now, my question to her is—supposing you were to discover that either Mr. Seigh or Mr. Marchegiani, Mr. Amioa, anyone else with a darker complexion, you were to discover that one of those persons had colored blood.

414 Would you forthwith bring an injunction suit against Mr. Marchegiani or Mr. Amoia or Mr. Seigh?  
The Witness: No, I would not.

By Mr. Urciolo:

Q. You would not?

A. No.

Q. In other words, then, the fact that any one of these now so-called white owners allege that they are white, and later you discovered that they had colored blood, you would not bring injunction proceedings against them?

A. I would not.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Gilligan:

Q. They were questioning whether or not these other plaintiffs were thoroughly familiar with the complaint which they signed, or whether you practically had coerced them into signing. Will you tell the Court whether or not they were familiar with them and how it came about that the second suit was brought?

415 A. Yes. They were familiar with them because when we found that other colored people had bought the houses and the tenants in the houses usually would call me, and tell me that they had gotten notices that the house was sold to colored, and, of course, when the other ones found it out they asked me what they should do and I said, "I will immediately get in touch with Mr. Gilligan and give him the facts as I have found them and ask him what the procedure should be." And he said, "Well——"

Q. (Interposing:) Who said "Well"? What did you do?

A. Mr. Gilligan——

Q. What you do?

A. I called each one and told them, and said I could call Mr. Gilligan and whatever they wanted done, Mr. Gilligan would do, and they were all willing for Mr. Gilligan to draw the second notice, the second injunction.

Q. Did you coerce anybody into that?

A. I certainly did not.

Q. Into signing?

A. No, sir.

Mr. Urciolo: Mrs. Hodge—  
Mr. Gilligan: Wait a minute.

By Mr. Gilligan:

Q. Just in order to clear up this last question that  
416 was asked you, though I don't consider it very  
important, presuming that the Court would grant an  
injunction and require all these parties here, negroes, to  
move from the block on Bryant Street, in which you have  
covenants over the houses, and then you found out in some  
way that one of these people who had testified already had  
negro blood, would you then be interested in bringing a  
proceeding against them in order to uphold the covenant?

A. Tell me that again, Mr. Gilligan.

Q. If the Court should grant an injunction requiring  
all negroes in there now, to move from their houses—

A. Yes.

Q. And later on, following up Mr. Urciolo's question,  
you learned that some of those people who had testified  
that they were white, or who were in the houses there, were  
really colored, would you be interested in beginning another  
proceeding against them?

A. If they were really colored?

Q. Yes, and—

A. If I—

The Court: What do you mean, "colored"?

Mr. Gilligan: Of negro blood.

The Court: I am asking her (speaking to witness).

What do you mean when you say "colored"?

417 The Witness: I mean negroes.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Hodge, these houses in question have a perpetual  
covenant on them?

A. Yes, sir.

Q. Now, Mrs. Hodge, in the course of time the properties  
west of First Street, rather, east of First Street, will  
expire, will they not?

A. Well, you mean—

Q. Twenty years or 50 years.

Mr. Gilligan: Now, he is asking for testimony that was not allowed yesterday. If you want to know, bring the books in and let's have them before us.

The Court: Sustained. / The covenants themselves will be the best evidence.

Mr. Urciolo: May I ask the question this way:

By Mr. Urciolo:

Q. Mrs. Hodge, if negroes moved in on the east side of First Street, all the way up to Channing Street, would you then be just as interested in keeping the perpetual covenant on your house as now?

A. Why, certainly I would, naturally.

418 Q. And you would want it to be kept forever, if it were a million years?

A. Why sure I would.

Mr. Gilligan: Particularly if she could live a million years.

Mr. Urciolo: One further question.

By Mr. Urciolo:

Q. Mrs. Hodge, you are an educated woman. You must have heard of Roman slaves, of which there were hundreds of thousands. Now, the testimony has been that Italians were exclusively and unequivocally of a white race—

Mr. Gilligan (Interposing): I object, if your Honor please, as to the statement as made, because that isn't true.

The Court: Sustained, just ask your question.

By Mr. Urciolo.

Q. My question is—Does the fact that there are no colored people in Italy give you some suspicion that the Italians may have some ever so slight strain of colored blood in them?

A. No, it does not.

Q. None whatsoever?

A. No.

Mr. Urciolo: Your witness.

Mr. Gilligan: That is all.

Thereupon PAULINE B. STEWART was called as a witness for and on behalf of the defendants and, having been previously duly sworn, was examined and testified as follows:

420 Direct examination.

By Mr. Houston:

Q. Mrs. Stewart, please state your full name.

A. Pauline B. Stewart.

Q. And your present address?

A. 150 Bryant Street, Northwest.

Q. Now, are you a native American?

A. Yes, I am.

Q. To the best of your knowledge, how many generations in your family go back as natives?

A. Well, I have the privilege of having lived to see four generations.

Q. Four generations that you have seen?

A. Yes.

Q. And they were all native born Americans?

A. Yes, sir.

Q. Now, Mr. Gilligan, and will you raise your voice, talk to the people in the back if you want, so we can all hear you—

A. Yes, I will.

Q. Now, how long have you been in the District of Columbia?

A. All of my life.

Q. You were born here?

A. Born, here; yes, sir.

421 Q. What do you do, now?

A. I am a feeder examiner in the Bureau of Engraving and Printing.

Q. How long have you been employed at the Bureau of Engraving and Printing?

A. Twenty five years.

Q. Now, did you buy this house at 150 Bryant Street, Northwest?

A. Yes, sir; I did.

Q. Who occupies it with you?

A. My father, my sister and her husband, and little boy.

Q. Nobody except members of the family?

A. That is all.

Q. Now, your father—was he a retired government employee?

A. Yes, he retired from the government.

Q. And your sister's husband, what does he do?

A. He is a cook in a golf club in Maryland.

Q. Your sister?

A. She doesn't work.

Q. Keeps the house?

A. Keeps house for us; yes, sir.

Q. All right. And your sister's boy, is there a child there?

422 A. She has a son there, and she also has one overseas.

Q. All right. And the son who is home—

A. 14 Years old.

Q. How old?

A. 14.

Q. And going to school?

A. In Junior High School.

Q. You say there is one overseas?

A. Stewart E. Reed, he is connected with the Anti-Aircraft Company.

Q. In the armed services?

A. Yes, he is.

Q. How long has he been in the armed services?

A. He will be in three years in April.

Q. And has he ever been overseas?

A. He will have been overseas two years in December.

Q. What theatre, Pacific or European?

A. Pacific.

Q. Anti-Aircraft?

A. Yes.

Q. Now, tell us something about your purchase of this house, where did you live previously before going to Bryant Street?

A. I lived at 2015 13th Street, Northwest.

Q. Were you rooming, or renting, or what?

423 A. No, my father was renting the house and we was evicted by the sale of the house around the 14th of March. We had been asked to leave from it, received a notice that the house was sold in November of 1945 to be released by December 1, 1945.

Q. All right, now, in December was a suit filed—

Mr. Gilligan: December as n't come yet.

Mr. Houston: When?

Mr. Gilligan: December. She said November 1945.

Mr. Houston: Obviously——

Mr. Gilligan: I thought she was to be evicted——

The Witness: 1944.

The Court: She corrects herself.

By Mr. Houston:

Q. In December, 1944, was a suit filed against your father?

A. Yes, sir; it was.

Mr. Gilligan: I object to the admission of that testimony, if your Honor please. I don't see that it has any bearing on the case, it is entirely irrelevant.

Mr. Houston: I will make my statement:

The statement is—1. I want to show the general stringency of the housing condition in the District of Columbia, particularly as affects negroes. I think that addresses itself on the balance of the equity, so far as the court

424 is concerned, exercising equitable jurisdiction. I also want to show the fact that this was a pressure move, where this family had to get shelter and that to that extent, I mean to say, it is a case of getting a house where they could get a house.

The Court: For the sake of the record, you may have your instrument marked for identification.

Mr. Houston: I am going to, just as soon as——

The Court: And then, I will rule upon the motion.

Mr. Houston: All right, sir (Producing document).

Mr. Gilligan: State what it is, what it is being marked.

Mr. Houston: If your Honor please, I am having marked as Defendants' Exhibit 3, the file from the Landlord and Tenant Branch of the Municipal Court in the case of Mabel Helen Leo, versus Paul R. Stewart, 2015 13th Street, for restitution of possession, Case No. 69,734, Landlord and Tenant Docket, filed December 9, 1944, endorsement on the paper showing judgment with a stay to March 1, 1945; a further entry marked "March 2, 1945" granting a further stay to March 9, 1945; a motion filed for a stay of execution, file stamp being dated February 21, 1945; affidavit filed by the plaintiff under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and bearing file date March 14,

1945; and, a request for a writ of restitution for possession of premises 2015 13th Street, dated the 12th day  
425 of March, and signed by Charles K. Brown, who appears of record as attorney for the plaintiff.

I wish that that be introduced to show that these persons were under necessity of getting out; that they bought under pressure; and, I want it to show the general stringency of the housing conditions, both as reflected by the stays of execution here, and also what her testimony will be and other testimony will be in the case, and I bring this in as one link in the chain of evidence.

The Court: Mr. Gilligan's objection is sustained.

(The Court file referred to was marked for identification as Defendants' Exhibit 3).

The Court: That was marked for identification only?

Mr. Houston: Yes, sir. Well, your Honor considers that what I said there was a tender?

The Court: Oh, yes.

Mr. Houston: That was marked 3, for identification.

By Mr. Houston:

Q. Now, Mrs. Stewart, you said that you had had a notice that your house had been sold over your head. Did you thereafter—what did you have to do, was there a writ of restitution served on you for eviction from those premises?

A. Yes, sir; there was.

Mr. Gilligan: I still object, if your Honor please.

426 The Court: The objection is sustained. It would not have been served on her, anyhow, because she wasn't the tenant.

By Mr. Houston:

Q. Were you evicted from the house under legal process?

A. Yes, sir; I was.

Q. What did you do with your things?

A. I had to put my things in storage in order to get out of the house at the time it was designated.

Q. Now, what did you personally have to do?

A. Well, my father is 83 years of age, and there was nothing that he could do—

The Court: Just answer the question.

The Witness: I had to find some place to go and I and my father went to my aunt's house and my sister and her family went to her daughter's house, until we found some place to go.

By Mr. Houston:

Q. You are now together on Bryant Street?

A. Yes, sir, we are all together now.

Q. Who did you buy your house from?

A. R. W. Horad Real Estate Company.

Q. What did you pay for the house?

A. \$9,450.

Q. And now, when did you first see Mr. Urciolo?

427 A. I met Mr. Urciolo at the appraisal—the title company.

Q. Now, have you had any trouble with neighbors, either white or colored?

A. No, I have not.

Mr. Gilligan: You mean down here at this house?

Mr. Houston: I am talking about 150 Bryant Street.

The Witness: No, I have had no trouble.

By Mr. Houston:

Q. Now, on this issue of sociability raised by Mrs. Hodge, you have a youngster in your house, your sister's boy?

A. Yes, sir.

Q. Does he play with any of the white children on Bryant Street?

A. Well, he was playing with the two little boys next door in 152.

Q. Where did he play with them?

A. There is a little boy there about two years old that came in my house and was playing with my little boy, and they play out there on the front.

Q. Play out on the front and also in the house?

A. Yes, sir.

Q. Still play out on the front?

A. Yes, sir.

428 Q. Were you able to see in this house before you bought it?

A. No, I was not.

Q. Now, Mrs. Stewart, who lives next door to you on the right, toward First Street?

A. I understand that the folks' name is Lusky.

Q. All right. What color is your father?

A. Dark brown skin.

Q. Now, there is no doubt about him being—

A. (Interposing): No doubt about him being colored, no.

The Court: What do you mean by "colored"?

The Witness: I mean that he is a negro.

Mr. Houston: I mean—

Mr. Gilligan: She has answered it.

By Mr. Houston:

Q. So that nobody could mistake the fact, just on seeing him?

A. That is right, yes, sir.

Q. Now, again on the question of sociability, did you all see Mr. Lusky when he first moved in?

A. I saw Mr. Luskey because I had to go there to get the keys to get into my house.

Q. What was Mr. Lusky's attitude?

A. He was very nice about it, Mrs. Lusky wasn't there, and he told me that she had left the key with him, and there it was, it was all right for him to give it to me, there it was.

Q. Did he say anything to you about not moving in, or anything like that?

A. Oh, no.

Q. Do you know Mr. Lusky's relation with your father and your brother-in-law,—what color is your brother-in-law?

A. Well, I would say my brother-in-law is light brown skin, if I could describe him that way to the Judge.

Q. He is—

A. He is lighter than the gentleman there, (referring to the court's messenger).

Q. Somewhere in the range—look around here at those of us who are in here.

A. Well, I would say that he is about Mr. Urciolo's color.

Q. Well, now, what was Mr. Lusky's relation with your father, so far as you know?

A. Well, Mr. Lusky has been very pleasant toward my father. They seem to like to discuss the same things, and

they did hold conversations for a while, a couple of days or so after we moved in.

Q. Mrs. Lusky.

A. She hasn't had anything to say whatever.

Q. Now, Mr. Dayton,—the Daytons—live in 144,  
430 do they not?

A. Yes, sir.

Q. Were the Daytons white?

A. Yes, sir, they are, so far as I know.

Mr. Gilligan: Of course, if your Honor please, I am objecting to this type of examination. I do not think it has a thing to do with the covenant.

The Court: Make your objection to any question.

Mr. Gilligan: To any question?

I object to this line of questioning. It has no value. They are in the house.—

The Court: You object to the question and not the line of questioning?

Mr. Gilligan: I object to this particular question.

Mr. Houston: The tender is: That Mrs. Hodge raised the issue as proof of her case, she got on the proposition, the only damage to the neighborhood was the question of sociability. I am trying to show that certainly as to many white persons in the neighborhood, that is not the fact.

Mr. Gilligan: You ought to bring them in, and question them.

Mr. Houston: It is certainly competent evidence for this woman to tell what her relationships were with these people.

The Court: The objection is sustained.

431 Mr. Houston: Is your Honor objecting to the line of examination or the question?

The Court: To the question.

Mr. Houston: The question?

The Court: Yes.

By Mr. Houston:

Q. Do you know a family in 144 Bryant Street, the man of the house and his name?

A. I know Mr. Dayton because he did some work for me after we had moved in the house.

Q. Did you have any conversation with Mr. Dayton?

A. I didn't; but my brother-in-law did.

Mr. Gilligan: I object to what your brother-in-law said.

By Mr. Houston:

Q. Was it in your presence?

A. Yes, it was.

Q. What was Mr. Dayton's attitude, so far as friendliness was concerned?

A. He was friendly enough.

Q. Now, what is Mrs. Amoia's attitude?

A. They have been very pleasant.

Q. Now, before you bought, did you know about colored people being on the square?

A. Yes, I did.

432 Q. How, and who?

A. Well, I was acquainted with a Mrs. Smith who lived in 164, one of our co-workers.

Q. At the Bureau?

A. At the Bureau of Engraving. I was also acquainted with Mrs. King who lives in 174.

Q. Mrs. Smith lives where?

A. 164.

Q. Mrs. King is in 174? All right, did you consider the neighborhood white or not white?

A. Well, I thought it was a mixed neighborhood, since there seemed to me to be as many colored as white.

Mr. Houston: That is all I want to ask.

Cross-examination.

By Mr. Urciolo:

Q. Mrs. Stewart, what color is Mr. Dayton, if you know?

A. Well, Mr. Urciolo, it would be very hard for me to tell, because each time that I have seen Mr. Dayton he has been in his working clothes, and I could not tell whether he was really colored, white, clean or dirty, to tell you the truth, because each time he was coming from a job. I would say, however, if I—

The Court: If you don't know, you must not say.

433 Mr. Urciolo: Your Honor, in these situations, as to color, it seems it is all a question of opinion.

May I ask what her opinion is as to Mr. Dayton, the present occupant of 144, whether he is white or colored?

Mr. Gilligan: I object to the question.

The Court: I must sustain that, in the light of her answer.

By Mr. Urciolo:

Q. Mrs. Stewart, as a native Washingtonian, do you consider this area the cultural negro center of the Nation's capitol?

A. No, I would not.

Q. You do not?

A. No.

434 Cross-examination.

By Mr. Gilligan:

Q. Mrs. Stewart, did you try to see the house before you bought it?

435 A. Yes sir; I did.

Q. Why didn't you see it?

A. I wasn't permitted to see it.

Q. Did they tell you why?

A. No, they didn't.

Q. What did you think was the reason?

A. Because I was colored, I was not permitted in.

Q. Did you at that time know that there was a restrictive deed covenant against negroes buying or occupying that house?

A. I was told there was in existence a covenant in the 100 block of Bryant Street. They didn't tell me anything about a perpetual covenant.

Q. But there was a restrictive—

A. (Interposing): But, an existing covenant.

Q. An existing covenant on the negroes?

A. I wasn't told whether it was on negroes or not.

Q. What did you think they meant when they told you that there was an existing covenant; what did you think they meant?

A. I thought it meant that we were not supposed to move in.

Q. When were you served with the suit against you?

A. The day before I moved into the house.

436 Q. The day before you moved in the house?  
A. That is right.

Q. So you knew the suit was pending against you when you moved your family, father and others, in the house?

A. Yes, sir.

Q. And you knew what the suit called for, didn't you?

A. Yes, sir; I read it.

Q. Did you talk to Mr. Houston about it before you moved in?

A. No, sir, I had no dealings with Mr. Houston until this; I was called in, now.

Q. Did you talk to Mr. Horad about it?

A. I did.

Q. What did he tell you?

A. He told me if I wanted to take the chance,—all right.

Q. In other words, go in if you wanted to take the chance?

A. Yes, sir.

Q. There isn't any question about the fact that you did see Mr. Urciolo at the time, at the title company, is there?

A. No question.

Q. Did he tell you about the negro question in the covenant?

A. No, he did not.

437 Q. He did not?

A. No.

Q. I will ask you this, I don't think it matters—Mr. Lusky is an invalid, is he not?

A. I really don't know. I just see Mr. Lusky sitting on the porch, sitting on the bench.

Q. I thought you said you saw him and your father talking together.

A. Both sitting on their porches at the time; he was on his porch and my father was on our porch.

Q. Does he look to be an invalid to you?

A. I don't know because he is an elderly man and so is my father, both are invalids, I presume.

Mr. Gilligan: That is all.

## Further cross-examination.

By Mr. Urciolo:

Q. My question is that—did anyone at the title company tell you anything about the covenant?

A. No.

438-440 A. No.

Q. In particular I am asking you, Mr. Brockway, do you recall Mr. Brockway?

A. Yes, I think Mr. Horad introduced me to Mr. Brockway when we went into the title company.

Q. Did he mention at any time anything about any covenant?

A. No.

Mr. Urciolo. That is all.

441 Now, on the record, your Honor, there are two things, one is that Mrs. Hodge called my attention to the fact that in the Amoia house, her recollection was refreshed when she heard Mrs. Stewart say that the youngster in her house played with the youngsters in the Amoia house. She said that refreshed her recollection of the fact that there are two more children in the Amoia house, I think she testified to two.

Mrs. Hodge: Yes.

Mr. Houston: A boy almost grown and two "teen" age children, you recall.

Mrs. Hodge: I don't know their names, but they have an apartment upstairs at Mrs. Amoia's, there is a little boy about two, and a little boy about five.

Mr. Houston: I wanted to get that in, in fairness to others.

The Court: Her testimony may be corrected to that extent.

Mr. Houston: I should also like to put in the fact that Mrs. Stewart has another boy, another nephew in the service who has been in the service, Wendell Jackson, her deceased brother's boy, and if you have no objection, that can—

442 Mr. Gilligan: I might ask the question, Did he ordinarily live with this family.

Mrs. Stewart: Yes, he did.

Mr. Gilligan: And if he was back in the city, would he live with you now?

Mrs. Stewart: Yes.

Mr. Houston: He is stationed at Fort Lewis, Washington, in the Engineering Corps?

Call Mr. Savage.

Thereupon HERBERT B. SAVAGE was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Savage, state your full name, please.

A. Herbert B. Savage.

Q. And your present address?

A. 134 Bryant Street, Northwest.

Q. How old are you?

A. 52.

Q. And your job?

A. I work at the Treasury Department.

443 Q. How long have you been there?

A. I have been there since '38, 1938.

Q. Raise your voice, please.

A. 1938.

Q. And you are a native citizen?

A. Yes, I am.

Q. And your ancestors, how far back were natives, as far as you know?

A. Oh, about three generations.

Q. You mean at least, to your personal knowledge?

A. Yes.

Q. How long have you ben at 134—how long at 134 Bryant Street?

A. 8th of October.

Q. That is, you moved in this Monday?

A. Yes, sir.

Q. On Monday?

A. Tuesday.

The Court: October of this year?

Mr. Houston: That is right.

By Mr. Houston:

Q. Tuesday of this week?

A. That is right.

Q. Now, where were you living prior to that?

A. 3705 New Hampshire Avenue, Northwest.

444 Q. Did you own that house?

A. No.

Q. What were you doing?

A. I was renting.

Q. Now, were you compelled to get out of that house?

A. I was.

Mr. Houston: If your Honor please,—

Mr. Gilligan: I make the same objection to the introduction of a suit that I did to the other one.

Mr. Houston: I ask that the file in the case of Junius S. Woodson and Wilmer S. Woodson versus Herbert B. Savage, 3507 New Hampshire Avenue, Northwest, filed in the Municipal Court July 2, 1945, in the Landlord and Tenants Branch for restitution of possession, 8707—

The Court: Now, if you offer the entire record—

Mr. Houston: I wanted to identify it sufficiently, your Honor, so that when I get the same ruling, I will have enough in the record so that the nature of it will appear.

The Court: And you would also have access to the complete record for the purpose of arguing it?

Mr. Houston: All right, sir. I will ask to have that marked for identification I think as Defendants' Exhibit No. 4, or, is it No. 6.

The Deputy Clerk: No. 4.

(The file thus identified was marked for identification only as Defendants' Exhibit No. 4.)

Mr. Houston: I move admission of that for the same reasons as the file in the case of Leo versus Stewart.

Mr. Gilligan: I object.

The Court: Objection sustained.

By Mr. Houston:

Q. Did you have any deadline from which to move from your property on 3507 New Hampshire Avenue?

A. I didn't understand.

Q. Did you have a deadline?

A. Yes, I did.

Q. In which you had to get out?

A. Yes, sir.

Q. What was that?

A. June the 10th.

Q. June 10, 1945?

A. Yes.

Q. Now, how did it happen that you stayed in after that?

A. They gave me an extension.

Q. When did that last extension expire?

A. It expired on October the—the last of October, I beg pardon,—the last of September.

Q. Last of September. Now, did you make any effort to get any other house except the house on Bryant Street which you actually bought?

A. I did.

Q. Well, state what you did in an effort to buy a house.

Mr. Gilligan: If your Honor please, I object to the line of questioning.

The Court: Objection sustained.

Mr. Urciolo: Your Honor, may I state that I think that the question is relevant because we want to show the fact that there was, No. 1, whereas houses are scarce and difficult to obtain, they are five times as scarce for colored people, and particularly in areas such as these where there are even vacancies, something that never occurs for colored.

The Court: The Court adheres to the ruling.

Mr. Houston: Well, may I just add one other factor, so as to get it in the record:

Under the change of neighborhood proposition, I think all the circumstances come up, and if the Court were in a situation in which the Court were undecided in the matter of change of neighborhood, obviously there has been some change, that could not be disputed, whether there would be sufficient occasion to warrant the nonenforcement,

447 I mean no injunction in such a neighborhood, it seems to me that the hardship on the defendants would be balanced over against the benefit to the plaintiff, injunctions being a matter of grace and not a matter of right.

For that reason, therefore, I should like to pursue the inquiry as to the efforts to get a house before he bought on Bryant Street, and the stringency, once again, of houses, or the lack of houses for negroes' occupancy.

The Court: The objection is sustained.

Mr. Houston: Before—

Mr. Gilligan (Interposing): The objection is sustained,

but Mr. Houston made one statement that I think ought to be objected to so that the record will show it. I object very seriously to the statement that this neighborhood hasn't changed in recent years.

The Court: Very well, that is one of the issues of the case.

By Mr. Houston:

Q. Mr. Savage, prior to the time that you bought, had you been familiar with the general area of Bryant Street, Adams Street, U Street, Flagler Place, Northwest, say between First Street and Second Street?

A. Yes, sir, I had.

Q. Had you ever actually been on Bryant Street?  
448 Prior to the time that you bought?

A. I had.

Q. Did you know anything about the character, about the racial identification of the people who lived on Bryant Street in the 100 block, before you bought?

A. Well, I passed through Bryant Street several times, and I have seen white and colored in there.

Q. Did you consider the 100 block of Bryant Street a white neighborhood at the time you bought?

A. No, I didn't.

Q. Had you ever visited on Adams Street right back of Bryant Street?

A. I have.

Q. Before you bought?

A. I did.

Q. And were there colored people or white people living on Adams Street in the 100 block, predominantly?

A. They were colored.

Q. Now, were there colored people living right in back of your—on Adams Street, right back of your house you bought on Bryant Street at the time you bought?

Mr. Gilligan: At the time that he bought—go ahead, I don't object.

By Mr. Houston:

Q. Do you understand the question?

449 The Court: You may answer.

The Witness: Well, if he will let me explain.

The Court: It doesn't require any explanation, if you can answer it.

By Mr. Houston:

Q. I don't think—do you understand the question?

A. Ask me the question again.

Q. I said, at the time you bought, were colored people living on Adams Street right back of the house that you bought on Bryant Street?

A. Yes, sir; they were.

Q. Now, did anybody—has anybody ever offered you a chance to buy the Lanigan house at 122 Bryant Street?

A. Yes, sir; they have.

Q. Who was that?

A. Ask me the question again.

Q. Who was it that offered you the chance to buy 122 Bryant Street, the Lanigan house?

A. It was Mrs. Pettit's brother.

Q. Mrs. Pettit's brother? Was that Mrs. Pettit a white tenant on Bryant Street?

A. Yes, she was.

Q. Where was she living, approximately, on Bryant Street?

450 A. No, he was on 17th and K Street Northwest when he made the offer.

Q. Was he a real estate agent, a broker?

A. He said he was.

Mr. Houston: All right, your witness.

Cross-examination.

By Mr. Gilligan:

Q. Did Miss or Mrs. Lanigan ever offer to sell you the house? You can answer that easily.

A. I don't know Mrs. Lanigan.

Q. So she never offered to sell you the house?

A. I said it was Mrs. Pettit's brother.

Q. I asked whether Mrs. Lanigan, who owned the house—

A: No.

Mr. Urciolo: He answered that he didn't know Mrs. Lanigan.

The Court: Is your answer yes or no?

The Witness: Mrs. Lanigan?

The Court: Yes.

The Witness: No.

By Mr. Gilligan:

Q. When were you served with the papers in the suit against you and others in connection with this covenant, this area of Bryant Street?

451 A. I don't know the exact date.

Q. Do you remember what month it was in?

A. It was in the month of September.

Q. That was before you moved into the house, wasn't it?

A. Yes, it was.

Q. And did you receive a letter from me, and your wife, as regards the question of the covenant and moving into the house?

A. It was the same one I speak of, a letter from you.

A. The letter from me, did you have your letter—do you have the original with you?

A. No, I don't have it.

Mr. Gilligan: If your Honor please, I would like to offer in evidence as a plaintiff exhibit, a copy of a letter which I addressed to Mr. Savage, for identification.

The Court: Was it subpoenaed?

Mr. Gilligan: I think so.

By Mr. Gilligan:

Q. Did we subpoena it from you?

Mr. Gilligan: I brought this man down under subpoena, whether or not it was a duces tecum there, I am not sure.

The Witness: It was a notice that this case was coming up.

By Mr. Gilligan:

Q. Anything on the paper about the letter, bringing—

452 Mr. Houston: Mr. Gilligan, is talking about a subpoena. Did the Marshal leave a subpoena at your house for you, or give you one?

Mr. Gilligan: To come down here as a witness.

The Witness: At which date?

By Mr. Gilligan:

Q. Within the last three or four days, when the case was going to begin?

A. No.

Q. You have not received a subpoena at all this week?

A. No, not this week.

Mr. Gilligan: The only thing I can say, in response to this, if your Honor please, is that the Marshal informed me that all the parties had been subpoenaed, had been served.

Mr. Urciolo: Your Honor, I object to that. If he wants to bring the records in, or the Marshal, please have him do so.

Mr. Gilligan: I will be glad to, if necessary. I don't think it is necessary.

The Court: Is there any objection to his offer?

Mr. Houston: No, I won't object. I will just ask Mr. Gilligan to confer a similar favor on me sometime.

The Court: Let it be marked, then.

(The letter referred to dated October 1, 1945 addressed to the Witness Savage, was marked for identification as Plaintiff's Exhibit No. 12.)

453 Mr. Houston: Show it to Mr. Savage (Plaintiff's Exhibit 12 for identification passed to witness.)

By Mr. Gilligan:

Q. I show you this copy of the letter, Mr. Savage, and ask you if you can recall whether that is a copy of the letter which I sent you?

A. It looks like the same letter that I received and turned over.

Q. Does it read like the same letter?

A. Turned it over to Mr. Urciolo.

Mr. Gilligan: I would like to ask Mr. Urciolo if he has it in his file.

Mr. Houston: Let's see if by any chance, I have it.

The Court: Do you have it, Mr. Urciolo?

Mr. Houston: No, sir, I am sorry. I have it. I am the one.

This is it, Mr. Gilligan, I am sorry (producing original of plaintiff's Exhibit No. 12 for identification).

Mr. Gilligan: If your Honor please, I would like to withdraw the carbon copy and ask that the original letter be admitted, instead.

The Court: Show it to him (indicating witness) and see.  
(Document passed to witness.)

The Witness: That is right.

By Mr. Gilligan:

Q. That is the letter?

454 A. Yes, sir; that is right.

Q. That is the letter?

A. Yes.

Mr. Gilligan: And the letter may be marked Plaintiff's Exhibit No. 12.

(Plaintiff's Exhibit No. 12, heretofore marked for identification, was thereupon received in evidence.)

Mr. Gilligan: I would like to read into the record this letter on my letterhead, October 1, 1945, to Mr. and Mrs. Herbert B. Savage, 3507 New Hampshire Avenue, Washington, D. C.

"Dear Sir & Madam:

"This letter is sent to warn you that 134 Bryant Street, Northwest, purchased by you, is under a deed of covenant, against sales, transfer, et cetera, to persons of the Negro race. The suit in which you are defendants is set for trial on October 9, 1945, and your occupancy of the property prior to the termination will be with actual notice not only of the suit itself, but also of the fact, if the Court upholds the covenant, it will be necessary for me to seek your immediate removal from the property by court order.

Yours truly,

HENRY GILLIGAN,

*Attorney for Plaintiffs.*

In Civil Action No. 29943."

455

By Mr. Gilligan:

Q. You received that letter?

A. Yes. May I ask you a question?

The Court: Did you receive the letter?

The Witness: I received it.

Mr. Houston: What did you want?

Mr. Gilligan: I have no objection to him asking a question.

The Witness: The question is, is that a subpoena for me to appear in this court?

The Court: No, that wasn't a subpoena.

By Mr. Gilligan:

Q. Mr. Savage, you are a negro, are you not?

A. Yes, sir; I am.

Mr. Gilligan: If your Honor please, I would like the record to show the date of service on Mr. Savage in the suit, in the original suit there.

Mr. Houston: Part of the record is in this very case.

Mr. Gilligan: Yes.

(File record passed to counsel and to Court.)

Mr. Gilligan: The record shows that Herbert B. Savage and Georgia N. Savage were served with the complaint on August 1, 1945.

456 By Mr. Gilligan:

Q. Have you ever seen Mr. Urciolo before today?

A. Yes, sir; I have.

Q. Did you see him at the title company?

A. Yes, I did.

Q. Was anything ever said to you at the title company, or by Mr. Urciolo, regarding the covenant in this case?

A. No.

Q. And through whom did you buy your house; what real estate agent?

A. Park Road Housing Company.

Q. And who is it that runs that housing company?

A. There is a Mr. Rivers.

Q. And he is a negro, is he?

A. Yes.

Q. Did he say anything to you about a covenant?

A. He did not.

Q. So that you never had anything discussed with you about the covenant prior to coming to trial today?

A. Prior to coming to trial today?

Q. Yes.

A. Yes, I have.

Q. Where?

A. Well, I have been in court all week, and it has been discussed.

457 Q. Was it discussed before that; did you discuss it with Mr. Houston, your attorney?

A. Yes, I did.

Q. Before you moved into the house?

A. Before I moved into the house?

Q. Yes.

A. Yes, I did.

Q. Did he tell you to move in, anyhow.

Mr. Houston: I object.

Mr. Gilligan: That is perfectly proper.

Mr. Houston: No, your Honor, once that—

The Court: You may answer.

Mr. Houston: Just a moment, your Honor. If it is a case of—I don't know what he is going to say, it is a case of confidential communication from client to attorney, or, I mean, attorney to client. You certainly can't go into that.

The Court: I have not heard that objection before.

Mr. Houston: I don't object, your Honor—

The Court: On the grounds of confidential communication, it is sustained.

By Mr. Gilligan:

Q. At any rate, you talked to your attorney before you moved in, didn't you?

A. Yes, I did.

458 Q. And moved into the house on Tuesday of this week?

A. Yes, sir.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Savage, as a matter of fact, I explained to you the covenant, did I not?

A. (No response).

Q. In my office.

Mr. Houston: When?

Mr. Urciolo: About two or three weeks ago.

The Witness: You may have, but I don't recall.

By Mr. Urciolo:

Q. To refresh your recollection—

A. All right.

Q. —do you or do you not recall my stating to you that this house had a perpetual covenant against sales to negroes, and also that the same perpetual covenant existed on several houses on Adams Street?

A. Yes; I recall that.

Q. Returning to your conversation with Mrs. Pettit's brother the real estate broker, did he tell you what price it went for, his house, the Lanigan house?

A. No, he didn't.

Q. What did he say to you? Sorry, that will be  
459 objectionable.

Mr. Urciolo: I will withdraw the question.

By Mr. Urciolo:

Q. Who was present when he offered you, or asked you, if you wanted to buy the house, or had any friend who wanted to buy the house?

A. Mrs. Pettit and—

Q. Raise your voice.

A. Mrs. Pettit, and Mrs.—it is a very hard name to call, how do you pronounce that, her sister that lived in 134?

Mr. Urciolo: No further questions.

Mr. Gilligan: No questions.

The Court: You may step down.

(The witness left the stand.)

Mr. Houston: Call Mr. Hurd.

If your Honor please, on thinking the matter over, I am perfectly willing to have Mr. Gilligan ask Mr. Hurd, not Mr. Hurd, Mr. Savage, anything I told him, if you want. I'd like to ask him.

Mr. Gilligan: I would like to ask the question.

The Court: Come back, please, Mr. Savage.

Thereupon, Herbert B. Savage was recalled as a witness and, having been previously duly sworn, was examined and testified further, as follows:

460 Mr. Houston: I do that so my own position will be clear all the way through.

Mr. Gilligan: What is the use of asking—

The Court: Put your question.

Further cross-examination.

By Mr. Gilligan:

Q. Did Mr. Houston advise you, when you saw him before you moved into the property; to go ahead and move in, anyhow? Don't look at Mr. Houston; look at me.

A. No, he did not.

Q. He did not? You said—

Mr. Houston: Well—

Mr. Gilligan: I wanted to make sure of one thing.

By Mr. Gilligan:

Q. You said you moved into the house on Tuesday, October 9, you meant, you said you moved in on the 8th, and you meant the 9th?

The Court: Tuesday is the 9th.

Mr. Gilligan: He said the 8th, but he said on Tuesday; he moved into the house on Tuesday, and that is the 9th.

The Witness: That is the day I moved.

Mr. Gilligan: That is Tuesday of this week.

Mr. Houston: That is all.

The Court: You may use this if you want to (passing calendar to witness).

461 The Witness: Tuesday the 9th is right.

(The witness left the stand.)

Thereupon, JAMES M. HURD was called as a witness for and on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. State your full name, will you, please?

A. James Mason Hurd.

Q. And your age.

A. I am 54 years old.

Q. And your residence?

A. 116 Bryant Street, Northwest.

Q. When did you move in?

A. I don't recall the exact date, but it was last year sometime.

Q. Has it been over a year ago, as far as you can recall?

A. As far as I can recall, it is over a year.

Q. Now, Hurd, what is your ancestry?

A. You mean my mother and father?

Q. Yes.

A. Well, they are considered as Mohawk Indians.

462 Q. So far as you know, you have no negro blood in you at all?

A. Not as far as I know.

Q. Where are you from?

A. I am out of the Rocky Mountains, North Carolina.

Q. What they call the Smokeys?

A. The Old Smokey.

Q. When did you come out of the mountains?

A. When I was very small around, I guess I was two or three years old, so I was told.

Q. Well, where did you go?

A. My family moved to Knoxville, Tennessee.

Q. What sort of neighborhood was it that you lived in?

A. White neighborhood.

Q. Your neighbors were white?

A. All white.

Q. Playmates were white?

A. All white.

Q. Your father worked—how?

A. He was a stone mason.

Q. Was he considered white or colored, or what?

A. Worked as white or colored, either one, he drew no line. There was no line drawn to him as I know of.

Q. Now, did you have any schooling at all?

o A. I had about three years schooling.

463 Q. Where did you take your three years of schooling?

A. In Knoxville College.

Q. Now, did all races go to Knoxville College at the time you were there?

A. There were plenty of Indians there, and colored, all white teachers.

Q. White teachers?

A. Yes, sir.

Q. Any white children going there at that time?

A. They didn't call themselves white; they called themselves Indians.

Q. After you left Knoxville College, what did you do?

A. I went to work for my father, helping him.

Q. And after that?

A. I left him when I was 14 years old and went to travelling.

Q. Now, when you were travelling, were you travelling as a white or colored man, or what?

A. I travelled as white.

Q. Did there come a time—did you serve in the First World War?

A. No, sir; I did not.

Q. Why?

A. Well, at that time I was exempted.

Q. How and why?

464. A. I was an automobile mechanic and steam engine mechanic.

Q. Where did you go?

A. They gave me, the Government gave me a job in the Roundhouse as steam engine mechanic.

Q. Now, was that job a white job, or a colored job?

A. It was a white job.

Q. Did you hold any union card?

A. Yes.

Q. And in what union?

A. Boiler Makers Union.

Q. Now, the Boiler Makers Union admits negroes?

A. No, sir.

Mr. Gilligan: Do you know that?

Mr. Houston: Do I know that?

Mr. Gilligan: I think that was the evidence.

Mr. Houston: Do you have a card?

The Witness: This was 1914 to 1917, I haven't joined the union since then.

By Mr. Houston:

Q. Now, did there—

A. I think I could get it, a duplicate from it, even the length of time it has been, I am not sure.

(There was discussion off the record.)

By Mr. Houston:

Q. Mr. Hurd, did there come a time when you met  
465 Mrs. Hurd?

A. Yes, sir; I met her in New Jersey, in my traveling around. When I met her she was living in the white neighborhood, Italian neighborhood.

The Court: Read that answer.

(The preceding answer, as above recorded, was read by the reporter.)

By Mr. Houston:

Q. Did there come a time when you married?

A. Yes, sir.

Q. Where did you marry?

A. I was working in North Carolina, Asheville, North Carolina, and at the time I sent for her to come down and we went to Hot Springs, and we married.

By Mr. Houston:

Q. When did you come to Washington?

A. I have been in and out of Washington, coming  
466 here, to live?

Q. Yes.

A. I came here to live the last time.

Q. After you were married?

A. We came here in '28.

Q. '28—and you married, when?

A. In '28.

Q. And came right here to live?

A. Yes, sir.

Q. Now, since you have been here, you have been working how?

A. I have been working for the Weldit, Incorporated, and myself, and worked in several white shops around Washington.

Q. Several white shops in Washington?

A. Yes, sir.

Q. Did there come a time when you bought a house at 116 Bryant Street?

A. Yes, sir.

Q. How did that happen?

A. Well, I had been looking for a house for pretty near three years or more, and the type of house I wanted to find, I couldn't find one. If I found one, the price was too high, and so one day I just happened to be driving down Bryant Street and seen the house empty so inquired about it  
467 and found it was for sale.

Q. Who did you buy through?

A. Sir?

Q. Who sold it to you?

A. Mr. Richardson.

Q. Was he white or colored?

A. White.

Q. Did Mr. Urciolo have anything to do with that sale, as far as you know?

A. Not as far as I know.

Q. Did you ever see him in connection with this sale?

A. No.

Q. Did there come a time when you received a letter from Mr. Gilligan—wait a minute, let's see if I have got it (going through papers).

I show you a copy of a letter that has been already introduced in evidence by Mr. Gilligan, and ask you if you got that letter (Plaintiff's Exhibit No. 2).

A. I did.

Mr. Houston: He is referring to Plaintiff's Exhibit No. 2.

By Mr. Houston:

Q. Now, I show you Plaintiff's Exhibit No. 3, and ask you is that the letter that you wrote Mr. Gilligan in reply?

A. Yes, sir.

468 Q. Who prepared the letter?

Mr. Gilligan: I object to the question as to who prepared the letter. It does not make any difference who prepared it. It was a letter and he signed it. He said so.

Mr. Houston: May I ask who helped prepare the letter, your Honor?

The Court: He may answer.

The Witness: Mr. Richardson prepared it for me.

Q. Where did you sign it?

A. I signed it at the place I worked at.

Q. Now, it says in here:

"In connection with your threatened action to bring about removal of my wife and myself from premises known as 116 Bryant Street, Northwest, for the sole reason that we are of negro extraction, please be advised that we have no desire to litigate the matter and will be more than glad to move from the neighborhood in which we now find we are not wanted."

How does it happen that you signed the letter, saying that you were negroes?

Mr. Urciolo: I object, Your Honor. The letter does not state that he is a negro, it says, "Whereas——"

469 The Court: You didn't read that part.

Mr. Houston: I didn't read that part of the letter? What he said about being a negro?

The Court: Yes.

Mr. Houston: I just finished reading the letter.

Mr. Urciolo: Read it slowly.

Mr. Houston:

"In connection with your threatened action to bring about removal of my wife and myself from premises known as 116 Bryant Street, Northwest, Washington, D. C., for the sole reason that we are of negro extraction, please be advised that we have no desire to litigate the matter and will be more than glad to move from the neighborhood in which we now find we are not wanted."

The Court: That is not an admission on his part that he is a negro. He is just reciting that Mr. Gilligan has——

Mr. Houston: I accept it.

Mr. Gilligan: If your Honor please, I don't suppose this is the time to make any suggestions in regard to that, but if this isn't an admission that he — of negro extraction, I don't know what it is.

The Court: It may be construed so, but I thought, as quoted, it wasn't so.

Mr. Houston: Now that my attention is called to it, I have no objection to facing it. That is one of the  
470 things I wanted to face when I asked about the time of the marriage of Mr. Hurd, but Mr. Gilligan stopped that.

The Court: Let's go ahead with the examination.

Mr. Houston: On that, I respectfully state that the letter—the sense of the letter is certainly as your Honor has indicated, and therefore, I won't examine further on the letter.

The Court: I mean to say, it is a matter of construction.

Mr. Houston: I agree with that, your Honor.

The Court: As distinguished from exact language.

Mr. Houston: I agree entirely to that.

Mr. Gilligan: It is a matter of construction, but it is perfectly clear construction.

The Court: That is something we can argue about later.

By Mr. Houston:

Q. Mr. Hurd, have you had any trouble with your neighbors?

A. Not a bit.

Q. Now, the little Johnson boy, did he ever visit your house?

A. Several times.

Q. Did he come in and eat with you?

A. Yes, sir.

Q. Are you friendly with the Johnsons, generally?

471 A. Yes.

Q. What have you done to your house since you have been in there?

A. Did a lot of remodelling on it; painted it up; did a lot of work on the inside; plastered and papering, and stuff like that.

Q. Now, the son Mrs. Hurd testified about, her son that was in the service, is that your boy?

A. No, sir; that is my stepson.

Q. And you run a welding business—where?

A. 2231 8th Street, Northwest.

Mr. Houston: Just a moment.

Your witness.

Mr. Urciolo: No questions.

Cross-examination.

By Mr. Gilligan:

Q. Did you ever talk with me over the telephone before you received the letter from me?

A. Yes, sir; I talked to you.

Q. Did I explain to you that negroes could not occupy those premises because of the deed covenant?

A. The way you talked to me over the telephone, you talked like you was talking to a dog and, therefore, I didn't care about talking to you, and lots of things you said.  
472 I didn't pay any attention to and to tell what you said,—I can't recall or repeat it word for word at all.

Q. You don't recall anything?

A. But what you said, I do not know.

Q. Then, you did get this letter, which is Plaintiff's Exhibit No. 2, from me, did you not?

A. I received that letter.

Q. How do you know?

A. No, I do know I received it.

Q. Did you—had you seen it?

A. I seen that copy a while ago.

Q. And it speaks about the fact that—at the time that you were on actual as well as constructive notice about negroes being prohibited from occupying or renting, leasing, and so forth, the premises there?

A. That stated that, but as I am an American citizen, I do not feel that another American citizen, as a body, could stop another American citizen from buying or living in a home.

Q. Whether a negro or not?

A. Regardless of what it was,—American citizens.

Q. In other words, so long as you are an American citizen, all of us, we have a right to buy and sell and live where we wish?

473 A. Yes.

Q. And that is what you did?

A. That is what I did.

Q. And regardless of whether the property has a deed covenant on it or not you didn't care?

A. I did care about it, and I looked into it.

Q. You looked into it before moving?

A. Before I moved.

Q. After finding out that it had a deed covenant, and knowing that you were of negro blood?

A. I didn't know I was of negro blood and didn't state I was of negro blood.

Q. Don't it say it here (indicating exhibit)?

A. No, I didn't state it was negro blood.

Q. Didn't you say it to me?

A. No, sir.

Q. And you didn't say it to Mr. Richardson?

A. No, sir; Mr. Richardson didn't ask whether I was colored or white.

Q. Did he say anything to you about it when the two of you were at the title company?

A. That it had a covenant on it.

Q. Against negroes?

A. Against negroes.

Q. And said for you to take a chance?

474 A. He didn't say anything about taking a chance.

Q. He didn't?

A. Didn't ask whether I was colored, or not.

Q. You are a pretty capable man in the matter of reading and knowing what you sign?

A. Some words I can understand; some I cannot.

Q. Did you misunderstand that?

A. I misunderstood a whole lot of that.

Q. Did you mean what you said by "for the sole reason that we are of negro extraction"?

Mr. Urciolo: I think that he is becoming argumentative, your Honor.

The Court: He may answer.

Mr. Gilligan (reading):

"For the sole reason that we are of negro extraction"?

The Witness: At the present time I can't answer that question proper.

By Mr. Gilligan:

Q. What do you mean, can't answer it proper?

A. First I have to have time to think it over.

Mr. Gilligan: Would your Honor let him have two or three minutes to think it over?

The Witness: Give me the letter to read over and think over.

(Letter was handed to witness.)

475 The Witness: What was the question?

By Mr. Gilligan:

Q. Whether or not you, in reading the letter and writing in it that you were of negro extraction, you meant it.

A. Whether in reading the letter and writing it?

Q. And signing it.

Mr. Urciolo: He stated he did not write the letter.

The Court: He may answer.

The Witness: I signed the letter, but did not properly read it.

By Mr. Gilligan:

Q. Did not read it over at all?

A. No.

Q. Didn't know anything about what it contained?

A. No.

Q. Didn't know anything about the letter I wrote, and what it contained?

A. No.

Q. So that you sit here and deny to this Court that you ever had the slightest idea what the letter contained, even though you signed the one in reply to my letter?

A. I didn't realize that it was going to cause all this disturbance.

The Court: Let's have that answer.

476 (The preceding answer, as above recorded, was read by the reporter.)

By the Court:

Answer the question.

The Witness: I deny that I realized what was in the letter; is that what you want?

The Court: Read that answer.

(The preceding answer as above recorded, was read by the reporter.)

By Mr. Gilligan:

Q. Where was this letter that you signed, signed?

A. I signed it at my place of work.

Q. Your place of work?

A. Yes.

Q. Who brought it to you?

A. Mr. Richardson.

Q. And he explained to you?

A. Didn't have time to explain it to me.

Q. Why not?

A. He was busy and I was busy myself at that time. We promised some work and we didn't have time to discuss anything.

Q. How did he happen to write the letter for you?

A. That I don't know.

Q. Did you turn over my letter addressed to you to  
477 Mr. Richardson for answering?

A. Did I turn your letter over?

Q. Sure.

A. Sure, I sent a copy of the letter.

Q. Then the reason why he answered this letter, wrote it for you, was because you turned this over to him to answer?

A. I turned it over to him to find out what it was all about.

The Court: Let's hear that answer. :

(The preceding answer, as above recorded, was read by the reporter.)

By Mr. Gilligan:

Q. Did you find out what it was all about?

A. The letter I wrote you, I sent to you, all I know.

Q. Didn't you discuss the type of answer he was to make for you?

A. No, sir.

Q. Where did you give him the letter that I wrote you?

A. I mailed it to his house, if I recall properly.

Q. Did you write him this letter with it?

A. No, sir.

Q. Did you talk with him by telephone?

A. Talked with him over the 'phone.

478 Q. Tell the Court what the gist of your conversation with him over the 'phone was?

A. I called him up when I received the letter and told him I received a letter from you and I was sending it out to him.

Q. What else?

A. That is all.

Q. Nothing about answering it?

A. No, sir.

Q. Why did you sign it then,—the answer?

A. Well, as confused as I was at that time, and I am very nervous and highstrung, don't like trouble, always run away from trouble, don't get into no mixup or jams and all this thing here had put me in the hospital and I stayed there three weeks after I talked to you the last time over the phone.

Q. You talked to me more than once.

A. The last time I talked. You called me two or three times.

Q. Trying to get you to go along and do what you said you would do.

A. I said I would, when I could find a place. Then after that, my wife says she liked the place and wasn't going to move anywhere.

Q. Under any circumstances?

479 A. Because she has as much right to live in a house as anybody.

Q. Even if of negro blood?

A. Don't put words in my mouth.

Q. I am asking you.

A. Did she say that?

Q. Is she of negro blood?

A. I don't know.

Q. You say that she lived among white people in New Jersey?

A. I said that she lived among white Italians.

Q. Why did this impress you, that she lived among white Italians, rather than colored or negroes?

A. Why?

Q. Why did that impress you? You seem to remember it clearly.

A. Sure, you remember your own affairs more than you do anything else.

Q. Let's get back to your own family. Do you remember your grandfather and grandmother on either side?

A. I remember my grandmother.

Q. Which side?

A. Mother's side.

Q. What was her color?

A. She was real light.

480 Q. And was she of negro extraction?

A. No, sir.

Q. Do you remember your grandfather, on your mother's side?

A. Never seen anybody, any of my father's people, but him.

Q. Who is him, Mr. Hurd? Your father?

A. Yes, sir.

Q. What color is he?

A. Real light.

Q. Of negro extraction?

A. No.

Q. How do you know?

A. Going by what he said.

Q. He told you he was white?

A. That is right.

Q. Did you talk to your mother?

A. Talked with my mother,—yes.

Q. Was she of negro extraction?

A. No.

Q. Wasn't she really a negro living in North Carolina when she married your father?

A. No, sir.

Q. Dr. Cooper who testified here yesterday in connection with Indians made the statement that you must never  
481 ask an Indian if he is, or if he has negro blood because he won't answer that, if it is true.

Mr. Urciolo: I don't recall that statement. I would like to have it read from the record. I don't recall asking him that question.

Mr. Houston: I think I do.

The Court: The Court does not remember whether you did, or not.

Mr. Gilligan: Mr. Houston said he remembers it.

Mr. Houston: It is my impression we were engaged in a discussion of Seminoles and the Five Civilized Tribes in Oklahoma and the question came up as to who was an Indian and who was not, and it was said it was a question of time and place how they were regarded; that he didn't go to them and ask them.

Mr. Gilligan: In North Carolina or Oklahoma?

Mr. Urciolo: In their particular section.

Mr. Gilligan: North Carolina, or Oklahoma?

Mr. Houston: Indians all the way down, and somebody,

Mr. Hodge, —

The Court: Was the testimony that when the Indians were asked about it, they would not say? That is the purport of the question.

Mr. Houston: As I understand, he said it was a touchy question. But they didn't ask.

482 Mr. Gilligan: Refused to ask and were very careful about any questions in that regard.

Mr. Houston: Ask it directly, then. He is under oath.

By Mr. Gilligan:

Q. As an Indian, if you are an Indian, you don't like to be asked whether you have negro blood, do you?

A. That is exactly the reason I haven't got a first class job today.

Q. I don't call that responsive. All right. That is a reason you have a —

A. I haven't got a first class job today.

Q. Because you don't admit that you have negro blood?

A. I don't like people asking me those things. Everytime you turn around, somebody is asking your color. Is you white, or what is you. You get tired of those things.

Q. But you did sign this letter?

A. Yes, I signed it.

Q. It says the only reason in getting out is because of negro extraction; and you say because of negro extraction.

Mr. Urciolo: The letter speaks for itself.

Mr. Gilligan: I am trying to get him to make his answer clear.

The Court: He may answer.

The Witness: I signed the letter.

483 By Mr. Gilligan:

Q. It speaks for itself?

A. I signed the letter.

Mr. Gilligan: You gentlemen are finished with it (indicating document)?

Mr. Houston: Yes.

The Court: You may step down.

(The witness left the stand.)

The Court: Well, address the Court, then.

Mr. Houston: Mr. Gilligan—

The Court: Don't talk to him; talk to the Court.

Mr. Houston: I should like for the purpose of clarity, if the Court desires, and Mr. Gilligan is willing, to go into this situation, go into the situation of Mr. Hurd identifying himself with negroes, and I will put a question in as to why he identified himself as negro.

The Court: That will be all for today, gentlemen. And I indicated there will be no afternoon session of this Court after recess, so I will ask you to return at 10 o'clock on Monday morning; and the Court, for other purposes, will be adjourned until 1:30.

(Thereupon, a recess was taken at 12:35 o'clock p. m., until Monday morning, October 15, 1945, at 10 o'clock, a. m.)

Monday, October 15, 1945.

Pursuant to recess, the above-entitled causes came on for further hearing and trial at 10 o'clock a. m., before Hon. F. Dickinson Letts, Associate Justice.

#### Appearances:

Henry Gilligan, Esq., for the Plaintiffs.

Charles H. Houston, Esq., for all defendants with the exception of Raphael G. Urciolo.

Raphael G. Urciolo, Esq., appearing in his own behalf.

488

#### PROCEEDINGS

Mr. Houston: May it please the Court, over the week end the matter developed which is causing me to file two motions asking Your Honor to disqualify himself and certify this case to another judge. I have set forth in the motion—in the affidavit supporting the motion—my certificate as counsel, the facts upon which the motion is based. A separate motion is made in each case.

(Documents placed before the Court.)

The Court: I think the record should show what the proceedings now are. The following affiants are in each of the cases before the Court—

Mr. Houston (Interposing): No, sir, James M. Hurd is in one, and the reason that the other defendants have not filed their affidavits was because, frankly, your Honor, I was not able to prepare them. I have no secretary, as I told your Honor the other day, and in order to save the point, I had to just file in each case, and I didn't get through that until 2 o'clock last night, and I should like to reserve the opportunity to make the same affidavits in behalf of the other defendants.

Mr. Gilligan: Before you proceed, it seems to me that the Section of the United States Code under which the affidavit is made, should be before the Court. If I may say this, of course it isn't my answer to that at all, but I notice that that section, Mr. Houston called my attention to this  
489 yesterday afternoon,—such a motion and affidavit must be filed and the matter must be brought to the attention of the Court at least ten days before the trial of the case begins.

Mr. Houston: That is right, or—good cause shown. It is Title 28, Section 35.

Mr. Gilligan: I think it ought to be before the Court.

Mr. Houston: I would have brought it, your Honor, except that I had not the time. I left the—

The Court: Continuing the Court's statement: An affidavit has been filed by Pauline B. Stewart in Civil Action No. 29,943, and by James M. Hurd in case 26,192. The Clerk has stamped over it. What is it?

Mr. Houston: 26,192.

The Court (Continuing): In each case the affiant charges the presiding justice with personal prejudice and bias against the defendants, making the affidavits.

At this point I would like to inquire of Mr. Houston whether or not that language is now relied upon or whether it is the specific charge made in these affidavits alone that is to be regarded by the Court.

Mr. Houston: I don't think you mean the general allegation of personal prejudice and bias is not sufficient, I mean that must be supported by detailed statements and the detailed statements appear at the bottom. Is that the question Your Honor asked me?

490 The Court: I find the affidavit charged, and the general language is, that this Court ascertained personal prejudice and bias against the affiants.

However, that general language is followed by specific language to the effect that the presiding judge lives in a house which is covered by a restrictive covenant such as we have in this case.

Now, my question was whether or not you are relying upon the general language of "bias and prejudice" or upon the allegation of bias and prejudice only so far as it relates to his living in the property.

Mr. Houston: I think it is both, Your Honor, because I checked up with the defendants on the next allegation, which says:

"That in said trial the presiding justice has been personally biased and prejudiced against affiant and his wife who are alleged to be colored, and in favor of plaintiffs who are alleged to be white persons because of his interest in the issues involved in the case."

Now, I am relying—both statement—and I consulted my clients before those statements were made. It is their feeling and that is the situation, and as their counsel, I have made the allegation for them and they have sworn to it.

The Court: Still, I don't understand your motion as to the position of your clients. Is the bias and prejudice only because of the allegations that I lived in the property which is subject to a restrictive covenant?

491-493 Mr. Houston: No, sir, not simply because of that;

I mean, when the clients went out, when my clients went out of court they felt your Honor had his mind made up against them. I mean, if you want to put Mr. Hurd on the stand, he is here; and Mrs. Stewart is here, but at that time, I mean there was absolutely nothing that I had upon which I could come in and make an objection. I have explained to your Honor my position in the case. I make no apologies of course for doing anything within the law, representing my clients, but it was not until the information came to me Friday afternoon concerning the facts that your Honor lived in a house with a covenant on it and that was verified on Saturday and there wasn't anything that in my opinion justified what, up to that time, so far as I was concerned, was a feeling which many litigants have, I mean to say, during the course of litigation, but the few things

brought together, to my mind, gave me a legitimate ground for making the motion, which I did; so I am standing on both ground.

The Court: The general allegation of bias and prejudice, I take it, is because some defendant, after the cases started and after the Court had made certain rulings, advised counsel that in her opinion the presiding judge entertained bias and prejudice?

494 The Court: Well, the Court thinks the allegations as to bias and prejudice have relation only to the allegation that the trial judge occupies a house that is covered by a restrictive covenant, similar to the one here involved. The Court will state for the record that he does not own the property in which he lives, that being 3500 Garfield Street, Northwest; that the property is in the ownership of W. C. and A. N. Miller Development Company and this Court has no personal knowledge as to whether or not said property is subject to a restrictive covenant such as is alleged, or any other restrictive covenant. The Court has no knowledge of the matters of title, and does not, even now, know the legal description of the property which he occupies.

The Court, I think, must overrule the motion.

Mr. Houston: May I say for the record that the allegation does not charge that the Court owns the property, the allegation specifically says "lives in or has an interest in the premises."

For the reason that Your Honor had not been interrogated, we made no allegation as to knowledge, but it is our flat position that it is a situation in which you have a condition which makes a climate of the trial unhealthy

495 and I should like to make a motion, on the basis of this affidavit, in open court, for your Honor to disqualify himself on the ground of interest, for the reason that the decision in this Court is a part and parcel of helping to make a law involving the house in which your Honor is living.

The Court: That would have to be formal, I assume.

Mr. Houston: Except, Your Honor, being made in open court and this being the first opportunity, I would be glad to reduce it to writing, but it is my understanding that I can make an oral motion in court.

The Court: It would have to be based on affidavit—

Mr. Houston: I am basing it in facts, according to James M. Hurd, in 26,192, and Pauline B. Stewart in 29,943, based on those affidavits. As to the discussion here of the interest which Your Honor has in the property under a covenant similar to the one here in suit,—

The Court: The motion will be denied; but, in order that you may save the point, the Court will say that he has no interest in the premises which he occupies as his home except that which adheres to a month-to-month tenancy.

Mr. Houston: Of course, our position is, you don't measure the interest, if the interest is there, it is not the quantum, but the quality of interest.

The Court: Very well. I think you may proceed.

Mr. Gilligan: If Your Honor please, I think for the  
496 record this section of the Code should be in there.

The Court: Will you read that?

Mr. Gilligan: Section 25 of Title 8 says:

“Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard, has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein but another judge shall be designated in the manner prescribed in Section 24 of this title, or chosen in the manner prescribed in Section 27 of this title, to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists and shall be filed not less than ten days before the beginning of the term of court, or good cause shall be shown for the failure to file within said time. No party shall be entitled in any case to file more than one such affidavit. No such affidavit shall be filed not accompanied by a certificate of counsel of record that such affidavits or applications are made in good faith. The same proceeding shall be had where the presiding judge shall file with the Clerk of the Court a certificate that he deems himself for any reason unable to preside with absolute impartiality in the pending suit or action.”

497 It is there and with a very definite note from decisions in connection with the matter which I would like to have in the record, but I think it is—

The Court: You can cite it.

Mr. Gilligan: It is the case of *Henry v. Speer*, Ga., 1913, found at 201 Fed. 869, 120 C. D. A. 207—pardon, leave that out,—the case is *Mr. Justice Lutton*, ex parte *American Steel Barrel Co.*, 1913, 230 U. S. 35, 33 Supreme Court, 100857, Law. Ed. And then there is the decision in re *Equitable Trust Company of New York*, a California case of 1916, found at 232 Fed. 863.

Mr. Houston: 232, 863.

Mr. Gilligan: In which it is spoken of as the basis of disqualification being "that the personal bias or prejudice exists by reason of which the judge is unable to impartially exercise his functions in the particular case." It is a provision obviously not applicable save in those rare instances in which affiant is able to state facts which tend to show not merely adverse rulings already made, which may be right or wrong, but facts and reasons which tend to show personal bias or prejudice. It was never intended to enable a discontented litigant to harrass a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his future action in the pending case; neither was it intended to paralyze the action of the judge 498 who has heard the case, or a question in it, by the interposition of a motion to disqualify that hearing and the determination of the matters heard. This is the plain meaning of the requirement that the affidavit shall be filed not less than ten days before the beginning of the term.

If Your Honor please, I feel that I must personally say that I think the affidavits and the motions are perfectly ridiculous.

Mr. Houston: Well, that is counsel's opinion, and also I want to call attention to *Whitaker* at 118 Fed. 2d, 596, 73 App. D. C., in which the matter came up and developed during the trial itself. The language of the Code specifically says "that the affidavit shall be filed not less than ten days before the beginning of Court or good cause shall be shown for failure to file within such time."

We stand on the record.

Thereupon Mr. JAMES M. HURD, the witness under examination at the time of the recess, resumed the stand, and being further examined, further testified as follows:

## 499 Cross-examination—Resumed.

By Mr. Gilligan:

Q. Do you own an automobile, Mr. Hurd?

A. Yes, sir.

Q. What is the license number?

A. I don't remember just exactly what it is.

Q. You don't remember?

A. No.

Q. Do you have your permit with you?

A. No, I haven't. It is in the car.

Q. Is it 79274?

A. 79—I think that is what it is, but I am not sure.

The Court: He says he was not sure.

By Mr. Gilligan:

Q. Not sure?

A. Not sure what it is.

Q. When you get an opportunity will you bring that permit into the court with you so that we may see it a little later?

A. All right.

Q. When you applied for permission to operate an automobile, what did you say was your color?

A. I didn't give any color.

Q. Didn't give any color at all?

500 A. No, sir.

Mr. Gilligan: That is all. I haven't any other questions.

Mr. Houston: No questions.

Mr. Urciolo: No questions.

The Court: Step down.

Thereupon NEVILLE D. MILLER was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. State your full name, please?

A. Miller—Neville D. Miller.

Q. What is your work, Mr. Miller?

A. Classified manager, Evening Star.

Q. For how long?

501

A. At the Star, forty-two years.

Q. Forty-two years.

Mr. Miller, will you please state what happens when a real estate agent calls in a house for sale to colored, in a non-colored neighborhood? Will you accept that add, or not?

A. Well, it is no positive rule, there is no positive rule on that, but we try to cooperate in the matter of not advertising to colored in known white sections.

Q. Would you explain further what you mean "there is no rule on it"? I don't understand you. Do you accept them or don't you?

A. Well, I mean that we could not say positively in any one case; we might not always know.

Q. But in cases where you accept them and then find out, do you then refuse to put in such adds?

A. We try to keep them out in the future, yes.

Q. Is that because of pressure on the part of the Washington Real Estate Board?

A. No, it is a matter of cooperation.

Q. With the Washington Real Estate Board?

A. And readers of the paper, yes.

502 Q. Who makes that policy, Mr. Miller? Do you yourself make that policy or have to follow the advice of superiors?

A. Policies are made out by the Evening Star Newspaper Company.

Q. And then directions are given to you, and do you in turn give those directions to the girls who take in the adds?

A. We give the directions to the departments, we carry out the orders of the company in that manner.

Q. How long has such a policy existed?

A. I couldn't answer that exactly, but quite a long time.

Q. Have you heard any complaints from real estate men concerning such a policy?

A. No, sir; never. I don't recall one.

Q. But you do recall taking adds which later on you have ordered cancelled?

A. That has happened.

Q. And the reason they were cancelled—

A. Well, I couldn't say cancelled; I would say renewals not accepted.

Q. Renewals not accepted?

A. Yes.

Q. Is it also your policy, Mr. Miller, that you will not accept an add which reads "Gentiles only"?

A. We try to substitute a better word such as "Restricted."

503 Q. I must ask you flatly, do you refuse those adds, or don't you?

Let's suppose that a recalcitrant advertiser insists on the words "Gentiles only", will you accept it, or would you not?

A. We probably would not.

Q. You would not accept the add?

A. No.

Mr. Urciolo: No further questions.

Mr. Gilligan: I have no questions, Mr. Miller, thank you.

Thereupon, EDWARD L. WILLS was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

504 Direct examination.

By Mr. Urciolo:

Q. State your full name, please.

A. Edward L. Wills.

Q. What is your business?

A. I am a real estate broker.

Q. Mr. Wills, in your transactions as a real estate broker, have you ever called in an add—an advertisement—into the Evening Star, which they have refused because you wanted to sell a house in a borderline neighborhood, labeling the add "Colored"?

Mr. Gilligan: Don't answer that until I have an opportunity to object.

If Your Honor please, I object to the question because it has nothing whatsoever to do with this particular case. If he were to qualify it and ask him about Bryant Street, then I would have no objection whatever; but to have a question,

a general discussion of a question of that kind, I object to it.

The Court: What is the purpose of the question?

Mr. Urciolo: The purpose, Your Honor, is this: Again following the same trend, that it was my position that the scarcity of houses for the negroes was about five times as great as that for the white people, and that not only is there the question of the fact of approximately 80 per cent of the property is covenanted and restricted against 505 negroes, but also that even such instrumentalities as the Washington Real Estate Board and the Evening Star newspaper refuse to take ads in a borderline neighborhood, if I want to mark it "Colored".

Consequently, it makes the prices of any house that negroes buy, 40 to 60 per cent higher because of the unavailability of such houses, and further the fact that it is almost impossible to, by advertising them, to let them know of the very few that do exist or are available.

The Court: The Court thinks any isolated case would not be sufficient to make that acceptable.

Mr. Urciolo: I will state it general terms.

By Mr. Urciolo:

Q. During your course in the real estate business, have you found that the Evening Star would not take an ad if you wanted to mark that ad "Colored", in a borderline neighborhood?

A. I have.

The Court: Wait just a minute. Are you seeking to contradict the witness who was just on the stand?

Mr. Urciolo: No, Your Honor. This is corroboration—corroboration.

The Court: Objection sustained.

By Mr. Urciolo:

Q. Mr. Wills, do you sell property to both white and colored?

A. I do.

506 Q. Mr. Wills, in your experience as a real estate broker—

Mr. Gilligan: What is your experience? If Your Honor please, I have not heard it yet.

By Mr. Urciolo:

Q. Are you a member in a brokerage, and licensed?

A. Licensed real estate broker, sir.

Q. How long have you been in the real estate business?

A. Since 1940.

Q. Where were you formerly employed?

A. Thomas W. Parks Company.

Q. You are exclusively engaged in the real estate business?

A. That is right.

Mr. Urciolo: Is that sufficient qualification?

Mr. Gilligan: So far as I am concerned, yes. I haven't anything further to say.

By Mr. Urciolo:

Q. Now, Mr. Wills, as a general rule, do negroes pay more for property or do whites pay more?

Mr. Gilligan: If Your Honor please, I object to that type of question. If he would confine his questions to questions about the Bryant Street, I would be happy for him to do it.

The Court: Sustained.

507 By Mr. Urciolo:

Q. Have you sold any property, Mr. Wills, in Le Droit Park, First Street, or the Bloomingdale section?

A. I have.

Q. You are acquainted with the neighborhood?

A. I am.

Q. You would be able to describe the neighborhood if I asked you?

A. I would.

Q. Now, then, I will put this question to you: If there were a house for sale in Bloomingdale, this Bloomingdale section or Le Droit Park,—who as a general rule would have to pay more for property, a negro buyer or a white buyer?

A. A negro buyer.

Q. About how much more?

A. Approximately 30 per cent more.

Mr. Urciolo: No further questions.

## Cross-examination.

By Mr. Gilligan:

Q. Just to make sure of what you mean, Le Droit Park is entirely colored, is it not?

A. Well, I wouldn't say entirely colored.

Q. How much colored?

A. Approximately two-thirds colored.

Q. Le Droit Park?

508

A. Yes.

Q. If I wanted to buy a house on let's say Fourth Street, between V and W, or Elm, would I have to pay more for it than a negro, today?

A. No.

Q. Would the negro have to pay more for it than I would?

A. Yes.

Q. Why?

A. There is a demand for property there, as far as the negro is concerned; there is no demand, I presume you are a white person—there is no demand as far as a white person is concerned, and the real estate market is more or less guided by the law of supply and demand.

Q. I don't know whether that answers me or not. I am a white man, let's say—whether I am or not. I wanted to buy a property on Fourth Street. Would I have to pay more for it than a colored man would have to pay?

A. You would have to pay more for it than a colored man.

Q. Right in this case?

A. I am talking about just in your case.

Q. You have a house for sale?

A. Right.

Q. Pursuing that—I come to you and I ask you about the purchase of that house. Would you sell it to me in  
509 the first place?

A. Well, I sell to anybody that has the money to  
buy.

Q. Would you sell to me on Fourth Street, between V and W?

A. Yes, I would, if you wanted.

Q. If I could get the property, and you would sell it to me?

A. That is right.

Q. Are you still connected with the Thomas W. Park Company?

A. No, sir, I am in the real estate business for myself.

Q. When did you leave Mr. Park?

A. I think it was in 1942, or the late fall of '41.

Q. You are a colored-man yourself, are you not?

A. Well, I don't know.

Q. You have some negro blood?

A. Well, I wouldn't say that.

Q. Did you ever sell any houses in the 100 block of Bryant Street?

A. No, I have never sold any houses in the 100 block of Bryant Street.

Mr. Gilligan: That is all.

510 Redirect examination.

By Mr. Urciolo:

Q. Mr. Wills, let us take a house in the 20- or 2100 block on First Street. Would a negro buyer have to pay a larger price for a house on First Street than a white buyer?

A. Negro buyers would have to pay more.

Q. About how much more?

A. As I said before, the overall percentage which I based it on is approximately 30 per cent more.

Mr. Urciolo: Thank you.

Mr. Gilligan: I live in the 2300 block of First Street and my house is covered by a deed covenant as are all other houses in there. Would you sell that house in that block—

Mr. Houston: How far down?

Mr. Gilligan: I said the 2300 block.

Would you sell a house in that block to a negro, if you thought he wanted to buy it?

The Witness: Do I have to answer that?

The Court: Yes.

The Witness: Yes, I would.

Mr. Gilligan: In other words, you don't believe in these covenants?

The Witness: Being a covenant—I don't believe in a covenant.

Mr. Houston: I have not had my opportunity at all.

511 Mr. Gilligan: I thought you had.

The Court: I think it is your turn now.

## Cross-examination.

By Mr. Houston:

Q. Mr. Wills, negroes very seldom are able to buy in these borderline neighborhoods until the property is run down, as far as whites are concerned; isn't that true?

A. That is true, sir.

Q. Is it also true that usually a neighborhood which has formerly been a completely white home owning neighborhood changes to at least partially a rental neighborhood before negroes get a chance to buy?

A. Yes, the whole picture, as far as the real estate market is concerned in Washington, tends to go through a change. First, there is full ownership, secondly, there creeps in renters, tenants; the tenants, in due time, become very undesirable and tear up the property or depreciate the property to such extent until the owners say, "Well, the only way that I can get whole, I will sell it to colored."

Q. In other words, before colored are able to buy, the property is usually one that has lost its desirability as a white home-owning neighborhood?

A. Yes.

Q. Now, when a negro buys, does he buy mostly for speculation or for personal home-owning occupancy?

512 A. Well, I would say 95 per cent of the negroes, the people that I sell to, buy for home ownership.

Q. Would you say that your experience is typical of brokers handling property, selling property to negroes?

A. I would say it is typical.

Q. Would you say whether the purchase by negroes for home ownership depreciates a neighborhood, or what?

A. It appreciates the neighborhood, because, first of all, when any owner—put it that way—moves into a property, naturally, and he lives in it, he is going to do everything to make his home look better than the one next door, and the neighborhood gradually goes back to its status quo, the way it originally was when the original white ownership had gone through the whole neighborhood.

Q. When a neighborhood ceases to be a home-ownership neighborhood and becomes a rental neighborhood, is it your experience that the owners spend as much money for repairing as they did when it was a home-ownership neighborhood?

A. They spend more money when it becomes a rental neighborhood.

Q. Well, now, is that for fixing up the property or simply maintaining it in habitable condition?

A. Maintaining it in a habitable condition.

Q. Why do they have to spend more money?

513 A. Well, naturally a tenant doesn't take as much care of property as the owner would; a tenant doesn't go out and mow the lawn or replace bricks in the wall, or maybe some things inside there—lets the kids tear the walls, and all that sort of stuff, and naturally it depreciates the property.

Q. So that although they don't spend more in improving it, they just spend money in maintaining it?

A. That is true.

Mr. Gilligan: If your Honor please, I only object because Mr. Houston is only putting this witness—

The Court: That is cross examination.

By Mr. Houston:

Q. If it is a fact that owners spend more money after they rent the property, on it, than they did when they lived in it themselves, is it the desire on the owner's part to improve the property, or what?

A. No, it is a desire on the owner's part to keep the property in a livable condition.

Q. Now, what about obsolescence? Has obsolescence already set in at the time the property ceases to be a home-ownership neighborhood and becomes a rental neighborhood?

A. Has it set in?

Q. Yes.

A. It has.

Q. Would you say that obsolescence is greater in a rental neighborhood than in a home-ownership neighborhood, or vice versa?

514 A. I would say greater in the rental neighborhood.

Q. Now, would you be willing to say what would be the ordinary limit, or top limit, where you would have a wide top limit of value, where you would have a wide negro market? In other words, I am not talking about an exceptional house that a man might pay \$50,000 for, I am talking about what you would regard as the ordinary top limit

where you would get a wide negro market in Washington?

A. The top price a negro would pay for a house?

Q. Not the top price a negro as an individual would pay—I mean, if you had a guiding figure on the market for sales, what would you say would be the top limit they could—where there would be a wide demand,—the general ability of the negroes?

A. I would say between \$9,000 and \$10,000.

Q. In other words, \$10,000, you have a wide negro market; is that true?

A. That is right.

Q. Now, do you know that neighborhood of the 100 block of Adams Street and the 100 block of First Street?

A. I do.

Q. And the 100 block of Bryant Street?

A. I do.

Q. That property—did it have—does it have a greater—is there a greater demand for it by the whites or by colored?

A. Well, there is a greater demand by colored, because it is in the proximity of Howard University and most of the colored activities are centered around that section.

Q. Is there a large negro apartment house at the corner of Second and V?

A. There is a large negro apartment house there, plus several other apartments below that.

Q. And, are there—or, is there a government dormitory for men at the corner of Second and Elm?

A. There is one at Second at Elm, and one on Third Street; for women.

Q. In your opinion, where does the white neighborhood start in that area—what is the dividing line?

Mr. Gilligan: I object to that question. I don't think that he can determine where the white areas stop.

The Court: He may answer.

The Witness: Well, it is my opinion that North Capitol Street has been more or less the dividing line, as far as the colored and whites are concerned, in that area.

By Mr. Houston:

Q. Well, would you say—what about First Street west, what has that been considered?

A. Negroes.

Q. Has that been considered a white or negro neighborhood?

516 A. It has been considered a negro neighborhood.

Q. Would you say that that is true all the way up to Bryant Street and through Bryant Street?

A. I would say so.

Q. Can you tell the race of the real estate operator as to whether, in the District of Columbia, as to whether he sells to white or colored?

A. No.

Mr. Houston: I think that is all.

Cross-examination.

By Mr. Gilligan:

Q. I would like to begin at Rhode Island Avenue and North Capitol, and go all the way north.

In your opinion as a real estate man, an expert who knows what it is all about, go up as far as you can go on North Capitol Street, and all of the intersecting streets from Rhode Island Avenue up to Channing, and tell me how many negroes live in that particular territory?

A. Well, now, I can't tell you right offhand just how many negroes are in there, because you don't know who lives next door to you, yourself. I don't know. You don't know.

Q. You are comparing yourself with me; is that it?

A. No, I am not comparing myself with you.

Q. I thought you said you were a very active real estate man who knew all about that.

517 A. I do.

Q. You said that North Capitol was the dividing line. If it is the dividing line, you must know whether there are negroes there between North Capitol and First, from Rhode Island as far north as you can go.

A. Well, I would say that the general neighborhood, seemingly, from its outside appearance, is white from Rhode Island Avenue up through—up to Michigan Avenue.

Q. From its outside appearance. So that you don't know of any negroes living in that territory?

A. No, I don't know of any cases, isolated cases of negroes living in there.

Mr. Gilligan: Just one other question—

Mr. Houston: Let him finish.

Mr. Gilligan: If he has not finished—go on.  
 The Court: Had you finished your answer?  
 The Witness: Yes, sir, I had finished.  
 The Court: All right.

By Mr. Gilligan:

Q. You said you were more or less familiar with this 100 block of Bryant Street?

A. I said in that area, yes, sir, from First Street over.

Q. I am asking you about the 100 block of Bryant Street.

518 A. Yes.

Q. Are the houses kept in good condition in the 100 block of Bryant Street?

A. Well, those near Second Street—the last time I was through there—seemed to have been in very good shape.

Q. How about those from First Street down to about 152?

A. Very ragged.

Q. Very ragged?

A. Yes.

Q. When were you through there?

A. I go there on an average of two, maybe three times a week.

Q. How about 116 Bryant Street—how does that look?

A. I can't carry a picture of the house in my mind, you understand, and why?

Q. Just the general conditions.

A. Yes.

Q. If I told you that from 154 down to the end of Second Street were all occupied by negroes, for example, is that the reason why it looks fine down there?

A. Pardon?

Q. If I tell you that 154 to Second Street, 154 Bryant down to Second Street, are all occupied by negroes, is that the reason they look bright?

A. I don't know whether they were occupied by negroes; you asked me a question about the general appearance of the houses, that is what I gave you.

Q. Can you tell me where the general appearance deteriorates? You said toward Second Street from First, but where does it begin to change so that it is not so good?

A. I would say approximately 40 per cent of the block down this way (indicating); 60 per cent back toward First Street.

Q. Forty per cent is fine?

A. Yes, very nice looking houses, seem to be kept very nicely.

Q. Sixty per cent doesn't look very good?

A. That is right. I know nothing about the percentage of occupancy.

Q. In which ways don't they look good?

A. Well, the outside is not painted, seems to be kept in a very unkempt condition. After all, we don't, as a real estate broker or appraiser of property, have time to go in every house to see whether or not the outline of the rooms is the same; when we take a look at the outside, if the outside is good, we presume that the inside is in good condition. Therefore, any appraisal we give is based upon the outside condition of the property.

Q. Have you appraised any houses?

A. I have.

520 Q. Which one—you have not?

A. I have appraised property here in Washington, yes.

Q. I mean, in the 100 block of Bryant?

A. I don't know whether I have or not.

Mr. Gilligan: No further questions.

Further redirect examination.

By Mr. Urciolo:

Q. Mr. Wills, let's take the area of Rhode Island Avenue, north, and west of First Street. Is that colored, or white, generally?

A. That is predominantly colored.

Q. But east of there is what?

A. That is right.

Q. Is what? What is it, east of First Street?

A. East of First Street, it is my general opinion that it is predominantly white.

Mr. Urciolo: That is all.

Mr. Houston: There is one thing I should like to correct in the record. I would like to do it now because we want to be in the very best possible shape.

521 In the complaint in these cases, paragraph 2 states—no, paragraph 1:

“Plaintiffs are citizens of the United States.”

I would like to request that the plaintiffs be amended to show that except for Victoria De Rita,—I think the same applies to 29,943. Once again I request that the plaintiffs be amended so as to say “except for Victoria De Rita.”

Mr. Gilligan: I would be willing to amend that to “except as to Victoria De Rita, who is an applicant for citizenship.”

Mr. Houston: I have no objection to making that statement of the facts. I wanted them recited.

Mr. Gilligan: I think that is all for us, if Your Honor please.

The Court: Very well.

Mr. Urciolo: If Your Honor please, at this time I think that we are making those changes, we may as well make a change in paragraph 1 of 29,943, where it states that plaintiffs are residents of the District of Columbia, as to Constantino Marchegiani and Mary M. Marchegiani, as the testimony brought out that that was not true.

The Court: This was filed in July. Are you sure that they were not residents of the District at that time?

Mr. Urciolo: No, I am not sure.

Mr. Gilligan: They were residents at that time.

Mr. Houston: You were going to call Mr. Rush, I think.

522 Thereupon CHARLES J. RUSH was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Mr. Rush, will you please state your full name?

A. Charles J. Rush.

Q. Where do you work, Mr. Rush?

A. Executive Secretary and Treasurer of the Washington Real Estate Board.

Q. How long have you been so employed?

A. Since October, 1932.

Q. Mr. Rush, how many members are in your organization?

A. The Washington Real Estate Board has 201 active members, comprising some 450 licensed real estate brokers in the District of Columbia, and, about 1,515 associate members—they are salesmen in the employ of the members.

Q. Now, to the best of your knowledge, Mr. Rush, is any negro a member of your organization?

A. No, sir; they have their own organization, the Washington Real Estate Brokers' Association.

Q. If a negro applied for membership in your organization, would you accept him?

523. A. That is a question I cannot answer, because the Board of Directors is the deciding factor.

Q. Have any applications ever been made?

A. Not to my knowledge.

Mr. Gilligan: If your Honor please, I would like to object to this line of questioning unless the attorney expects to connect it up in some way with these two cases.

Mr. Urciolo: I withdraw the question.

The Court: All right.

By Mr. Urciolo:

Q. Mr. Rush, what is the policy of the Washington Real Estate Board as to selling houses to negroes in a borderline area?

A. The only way I can answer that—our rules provide that in cases of doubt, members should obtain the advice of our Public Affairs Committee.

Q. Would you explain that further? I don't understand you fully.

A. The committee has been set up by the Board, and a new committee is appointed each year to contact—to answer questions that are submitted by members as well as non-members as to the sale of a property in a doubtful area.

Q. In other words, do I understand you to say that the committee will advise an applicant, whether he may sell that property to a negro, or not?

524. A. We advise our members that they cannot sell or can sell to the others. You have called, many years ago, and we have advised you that after inspection of the area, consultation with the Citizens' Group in the area—or the property owners in the area—that the property could or could not be sold without criticism.

Q. Now, Mr. Rush, when you consulted with the Citizens' Groups, were any negro citizens groups ever asked to join in the discussion?

A. I cannot answer. I am not a member of the Public Affairs Committee.

Q. Mr. Rush, has your organization—have you called the Evening Star and objected to their advertising certain houses for negroes in white neighborhoods?

A. We have contacted the Evening Star and have said that we have been requested by these associations—these Citizens' groups in those areas—to not to let or permit our members to sell properties in those areas.

Q. To negroes?

A. To negroes.

Q. To negroes?

A. That is correct.

Q. How about as to Jewish groups?

A. I have never had a question come up on that line by any—

525 Q. You have never called the Star asking them that they refrain from using the words "Gentiles only"?

A. That would be presumptuous on our part to ask anybody not to do anything when we do not have any jurisdiction over that. The publishers of the papers decide their policy. We do not tell them what to do.

Q. But you do tell them when it concerns negro occupancy?

A. I beg pardon; we tell them what has been conveyed to us by citizens groups.

Q. Well, if something were conveyed to you as to the Jewish occupancy, would you assume the same—would you refer the same matter to the Star?

A. I have—

Mr. Gilligan: Just a minute.

If Your Honor please, I am inclined not to object to this but I must say that I want the Court to get any information possible; but what possible bearing do the Jews have on this matter?

Mr. Urciolo: Racial discrimination, whether it — against Jews or Italians.

The Court: He may answer.

The Witness: I have stated previously that that question has not arisen.

By Mr. Urciolo:

Q. Then, my question to you was that—if the question did arise would you feel it your duty to notify the Star in the same manner that you did as to requests you have had concerning negro occupancy?

A. I can only say that when that time arises I would be advised by the committee.

Mr. Urciolo: That is all.  
No, one more.

By Mr. Urciolo:

Q. Is that advice to the Star given only when there are covenants in the areas restricting the property, or whether there are covenants or not?

A. I cannot answer you on that, because I only convey the information which has been brought to me by the citizens' groups.

Q. Irrespective of restrictions or not?

A. The same thing I said before—I do not know—I am only conveying information which has been sent in to me.

Q. Mr. Rush, do you recall calling me several years ago and asking me to refrain from selling property to negroes in an area that was not covenanted?

A. I do not recall whether or not they were covenanted, but I do recall that after—that at that time you were a member of the Washington Real Estate Board, which membership was later terminated when you went to Italy, and we asked you to abide by the Board's rules.

527 Q. In other words, Mr. Rush, your organization attempts to enjoin the sale to any negro by any person whether he be a member of your Board or not.

A. No, sir, you are mis-stating my statement.

Q. In other words, you would never call a real estate man asking him to please refrain from selling to negroes if he were not a member?

A. That is right.

Mr. Urciolo: No further questions, thank you.

The Court: You may have the witness, Mr. Houston.

## Cross-examination.

By Mr. Houston:

Q. Mr. Rush, what do you mean by saying "policy of the Board"?

A. May I quote the By-Laws of the organization, which state the policies?

Q. Yes.

A. I beg pardon, not the By-Laws—our Code of Ethics.

Mr. Houston: May I see it?

(Pamphlet passed to counsel.)

Is this an extra copy?

The Witness: No, I have but one copy.

Our Code of Ethics, Section 5, paragraph 15:

"No property in a white section should ever be sold, rented, advertised, or offered to colored people.

528 In a doubtful case advice from the Public Affairs Committee should be obtained."

Mr. Houston: May I have that marked as an exhibit?

("Code of Ethics" of the Washington Real Estate Board was marked as Defendants' Exhibit No. 5 and received in evidence.)

By Mr. Houston:

Q. What constitutes a "white neighborhood"?

A. I cannot answer that, Mr. Houston.

Q. Where would that answer come from?

A. From the areas, property owners, covenants, occupancy—all of those things.

Q. Well, doesn't there have to be some standard? Do you mean to say that a white neighborhood varies according to whether the white people want to keep it white or not?

A. I can't answer you on that. I am not a member, simply Secretary of the organization.

Q. Can you tell me whether, for example, if you have out of thirty-some houses, say three negroes in the block, would you consider that a white area?

A. I would say that whatever the committee would happen to say, based upon the requests from the citizens, the property owners or the wishes of the citizens groups.

Q. Does the Washington Real Estate Board have any standards of its own?

529 A. No, no standards—no set rules. Each case must be decided upon its merits.

Q. How long have you been—Were you at one time a licensed real estate broker?

A. No, sir, I have never been in the real estate business.

Q. So that you don't seek to set yourself up to know anything about the cycle of depreciation or anything like that?

A. No, sir. I am Public Relations man and Executive Secretary and Treasurer, and have been doing that work for 25 years.

Q. As Public Relations man, you have no standards of your own, but simply transmit what is handed to you?

A. Yes, sir.

Q. Do you know anything as to whether the real estate—What is the national organization?

A. The National Association of Real Estate Boards, is an affiliation of real estate boards throughout the United States. We have grown so rapidly the past few years that we don't know whether we have 675 boards or 700.

Q. Do you know whether in studying this question of negro ownership and occupancy, recently there has been a pronouncement about negro areas, in purchasing of homes?

A. Yes, the National Association of Real Estate Boards has urged financing—if I may just proceed a moment  
530 along that line?

Q. Go right ahead.

A. For many years, you know that it was impossible for the negro to get financing so that he could build his home, that he could purchase a home on a fair, modest down payment. When FHA became the insuring agency for the Federal Government, and the building of homes, we supported that as a national organization, because we saw that through that there would be a means of building homes for people in the lower income groups, not only the negro race, but also the white with a lower income.

Our national organization has sponsored this past year—I am sorry I don't have the material with me—but it has urged the building of homes, and our past national president, Mr. N. C. Farr, of Chicago, has built a very large project in Chicago. Others throughout the United States

are now building either for rent or for sale, and that is also being done here in Washington. There are several new developments under construction now which were not possible in the past, because the lending agencies did not make it possible for us to build under the financing which was then available.

Pardon me, for being so long, Judge.

By Mr. Houston:

Q. Incident to that, was there a statement that negro home purchasers were good credit risks?

531 A. Yes, that was found as a result of a national survey and, off the record here for a moment, we can say that in Washington, hundreds of properties here are occupied by negroes and have been found to be highly desirable by investors, by property management men, and so on.

Q. So that it is not true as a general statement that negroes coming into neighborhood depreciate the same?

A. I am not answering on that, because I am not an authority on depreciation. I am talking now about housing being built for the negro race.

Q. And it has been found that hundreds of negroes are—hundreds of negro properties are desirable properties from the standpoint of investment, and the standpoint of almost any standpoint?

A. That is right.

Mr. Houston: That is all.

Mr. Gilligan: One or two questions.

Cross-examination.

By Mr. Gilligan:

Q. I think you know Mr. Urciolo, do you not?

A. Yes, sir.

Q. Is he a member of the Real Estate Board now?

A. No, sir.

Q. Has he applied since he returned from Italy?

A. No, sir.

532 Q. If I should say to you that Mr. Urciolo openly stated that he does not believe in restrictive deed covenants—

Mr. Urciolo: Racial covenants.

By Mr. Gilligan:

Q. (continuing) — restrictive deed covenants or racial covenants, restrictive deeds on races, and he would so state on his application, would you admit him to your membership?

A. I cannot answer for myself. I am not the Board of Directors, but I do know, though, that our organization believes in upholding the law respecting all terms, deeds or covenants, restrictions and so forth, or what have you.

Q. So that you personally would not pass on his application?

A. I have no jurisdiction, Mr. Gilligan.

Mr. Gilligan: That is all, thank you.

Re-direct examination.

By Mr. Urciolo:

Q. One further question along the same line, Mr. Rush: Do you recall the Lily Pons Project out here, Central Avenue way?

A. Vaguely, yes, sir.

Q. That was built for white people, was it not?

A. I assume so, built by the National Capital Housing Authority. That is the former Alley Dwelling Authority, under Emergency Housing, but what its occupancy was to be I do not know, but I can assume with you that it was for white occupancy.

Mr. Gilligan: If Your Honor please, I presume that Mr. Urciolo is going to connect that up in some way with this case.

The Court: Well, the witness says he doesn't know.

By Mr. Urciolo:

Q. But, you are acquainted with the development, the Lily Pons Project?

A. I have been in the development, yes, sir.

Q. When you went in there, Mr. Rush, did you see whether it was occupied by white or colored?

A. It was then in a pleasant state of highly incompleated housing, so I do not know.

Mr. Urciolo: No further questions.

The Court: Is that all, gentlemen?

534 Thereupon LEONARD S. HAYES was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Will you please state your full name?

A. Leonard S. Hayes.

Q. Mr. Hayes, where are you employed?

A. I am employed at the Administrator of Rent Control's office.

Q. In what capacity?

A. Examiner.

Q. Mr. Hayes, did you bring with you the records for 130 Adams Street and 144 Bryant Street?

A. Mr. Urciolo, I have with me the records for 144 Bryant Street. Some of these addresses which have been subpoenaed, however, show no record on these addresses. I have a record on 135 Adams, 140 Adams, 142 Adams, 144 Bryant, 134 Bryant and 118 Bryant.

Q. Would you please state to the Court the ruling 535 on the case of 144 Bryant Street?

Mr. Houston: Get the case number.

The Witness: Repeat the question, please.

By Mr. Urciolo:

Q. 144 Bryant Street.

Mr. Gilligan: If Your Honor please, I would like to know what you mean by the "ruling"?

The Court: Do you mean the ruling of the Administrator?

Mr. Urciolo: Yes, Your Honor.

Mr. Gilligan: On what subject?

Mr. Urciolo: On an application for rent ceiling.

The Witness: What address, Mr. Urciolo?

The Court: 144.

The Witness: Reading from the record here (consulting documents), "The legal maximum rent ceiling for 144 Bryant Street, Northwest, is \$35 per month."

By Mr. Urciolo:

Q. Did the applicant, Mr. Hayes, ask for an increase?

A. The applicant did ask for an increase, asked for an increase of \$35 a month to \$65—a \$30 increase.

Mr. Houston: What is the date of the ruling?

The Witness: The examiner's order was issued February 2, 1944, effective February 13.

By Mr. Urciolo:

Q. And what was the ruling, please?

536 A. The ruling was that the rent remain at \$35 a month which had been charged in the past.

Q. Will you please take the record for 118 Bryant Street? Now, what was that record, Mr. Hayes?

A. That is Case No. 11906.

Mr. Houston: What was 144? I didn't get that?

The Court: \$35.

Mr. Houston: The case number.

The Witness: The case number was 16176.

As to the 118 Bryant Street, Northwest, the rent on January 1st, 1941, was \$40 a month. There was a request to increase the rent to \$65 a month; as a result of a hearing an order was issued setting the rent at \$40 a month, which had been charged in '41.

By Mr. Urciolo:

Q. Do you have the record for 134 Bryant Street?

A. Case No. 11907, the rent ceiling on January 1st, '41, was \$48 per month. There was a request to increase the rent to \$65. On June the 23rd 1943, an order was issued setting the rent at \$48, which had been charged in '41.

Q. Mr. Hayes, you were the examiner in those three cases, were you not?

A. Yes, sir.

Q. Do you recall whether these defendants were white people or colored people?

537 A. My recollection is that they were white.

Mr. Gilligan: "These defendants"—what does he mean?

The Court: Did you say defendants or tenants?

Mr. Urciolo: I said "defendants". I was the plaintiff in those three cases.

The Witness: Our terminology is different.

The Court: What do you mean,—applicant?

The Witness: Petitioners or respondents.

By Mr. Urciolo:

Q. The respondents were white people?

A. That is my recollection.

Mr. Gilligan: I think you added that the petitioner was yourself, Mr. Urciolo?

Mr. Urciolo: Yes.

By Mr. Urciolo:

Q. Now, Mr. Hayes, will you please take the cases—the case of 130 Adams Street?

Mr. Gilligan: Now, if Your Honor please, I don't see where that is pertinent, 130 Adams Street. That is certainly not before the Court.

Mr. Urciolo: Your Honor, the reason I am making that is as follows:

I want to show the Court that the rents were \$35, \$40 and \$48; then, I am going to take three houses on Adams Street, which are occupied by colored and ask him to state the rents approved on those; in other words, to show the great discrepancy as to the rentals paid by white and by colored in order to establish—contradict the statement in the complaint that negroes—the presence of negroes—will be depreciative and ruinous of the property in question.

The Court: What block of Adams Street?

Mr. Houston: 100 block.

Mr. Urciolo: 100 block, immediately back of Bryant Street.

The Court: He may answer.

By Mr. Urciolo:

Q. 130 Adams Street, Mr. Hayes.

A. As I told you before, Mr. Urciolo, our office has no record of 130. We have a record of 140, 135, 132 and 142 Adams.

Q. Well, Mr. Hayes, please state to the Court the case No. 135 Adams Street.

A. This particular form (referring to yellow sheet in his hand) has no number, Mr. Urciolo. It is an application for a rent ceiling on a place that was never occupied, not occupied on January 1st, 1941. In our office that is called a "Petition No. 39 form".

Q. Who was the petitioner?

A. Mr. Raphael G. Urciolo.

Q. And what ceiling was set on the house, Mr. Hayes?

539 A. The present rent on the house is \$75 a month.

Q. Has that ever been modified?

A. Never been modified by our office, no ceiling has been set, however.

Q. Now, 140. Please get the record out for 140 Adams Street.

A. All right, sir, I have that.

Q. Who was the petitioner there?

A. A Mr. Charles M. Connor.

Q. And what ceiling was set?

A. No ceiling has been set. \$62.50 per month is being collected.

Mr. Houston: How much?

The Witness: \$65; I am sorry.

By Mr. Urciolo:

Q. \$65 is being collected?

A. Yes, sir.

Q. Please get the record out for 142 Adams Street.

A. All right, sir.

Q. What is the case number?

A. There is no case number.

Mr. Gilligan: What?

The Witness: There is no case number. This is a petition of a Mrs. Letty G. Martin, to establish rents on individual rooms in the house. In her petition she sets forth  
540 that the rent per month for 142 Adams Street, North-west, is \$62.50 per month.

By Mr. Urciolo:

Q. Mr. Hayes, did you state whether there was a ceiling established at \$62.50 per month?

A. Our record shows no such establishment. I did check the record.

Mr. Urciolo: Your Honor—

The Witness [interposing]: It may be, by operation of law, there is a ceiling. I don't know what the situation is. The only record in our office is this rooming house schedule.

Mr. Urciolo: May I be excused for a moment, Your Honor?

(Discussion off the record.)

By Mr. Urciolo:

Q. Do you have the record for any other house on Adams Street, or Bryant Street?

A. No, sir, nothing except the application for individual rooming,—application for rents—rents for individual rooms at 132 Adams Street, Northwest. The applicant sets forth that she is the owner of the premises and there is no ceiling on that house.

Q. Now, Mr. Hayes, you have been an examiner since the inception of the Office of Emergency Rent Control, is that correct?

A. That is correct, sir.

541 Q. Roughly, Mr. Hayes, how many cases a day do you hear?

A. I imagine the average is approximately ten or twelve cases a day. Well, by "case," I mean individual housing accommodations. They may be rooms or private dwellings.

Q. Consequently, Mr. Hayes, you have heard thousands of these cases?

A. Yes, sir.

Q. And, Mr. Hayes, having heard thousands of these cases, can you state—answer only if you can honestly state—whether negroes pay more rent than white people for similar accommodations?

A. I can't answer the question categorically. I could answer with some explanation.

Q. Well, answer to the best of your ability.

A. From my observation of various cases I have had, I have found that where negroes are going into an established white neighborhood, the rent charged the negroes is usually higher than what the whites in the neighborhood are paying.

Q. About how much higher? Would you say ten per cent, sixty per cent, thirty per cent?

A. My guess would be that it is approximately from \$10 to \$20 a month higher.

Q. Ten to twenty dollars per month higher?

542 A. Yes. I might say, if it would help the record any, I think I ought to state in order to have my position clear, that usually when there is the increased rent to negroes, there is a difference in the housing accommodations. By that, I mean in most cases you find that the house rented to the negro had been renovated or had in some way been rehabilitated. Generally the whites are living in a house that is not in as good condition as the negro's.

Q. Mr. Hayes, is there any method by which you can know if an applicant is white or colored?

A. Our form has no such designation. The only means I can use to determine is by actual observation when the persons come before me at the hearing.

Q. I call your attention, Mr. Hayes, to the yellow form. Do you have a yellow form with you?

A. No, sir.

Q. Do you recall whether the yellow forms have, as one of the questions to be filled out by the applicant, whether he is negro or white?

A. We have a great number of forms. We have a yellow form which is an apartment house schedule. It merely shows what the particular apartment was renting for on January 1st, 1941, and the form, according to my recollection, does have white and colored distinguished.

Q. So as to apartment houses, you can tell whether the applicant by his own statement is white or negro?

543

A. Yes, sir.

The Court: Well now, did I understand you? I thought you said that it showed who was the occupant in 1941.

The Witness: No, sir—

The Court: It also shows the color of the applicant?

The Witness: The form relates to what the situation was on January 1st, 1941; and also in the form there is a question as to whether the occupancy is white or colored as of that date.

Mr. Houston: Is that an apartment house, or general?

The Witness: Sir?

Mr. Houston: Is that an apartment house, or general?

The Witness: That is specifically for apartment houses.

Mr. Houston: Not for the ordinary Form 39?

The Witness: Not for the ordinary form 39, no, sir. We have a particular form that is limited only to established apartment houses where there are four or more apartments in a building, and that is the form where the question is asked as to whether the occupancy is white or colored.

Mr. Houston: Outside of that particular form—Your Honor, I am simply speaking at this time to clarify the record, if I may.

Outside of that particular, there are no forms in the Office of the Administrator of Rent Control which indicates  
544 the color of either the respondent or petitioner, or the color of an occupant or the color of the owner?

The Witness: That is my recollection, Mr. Houston. I believe we have about 60 forms, but my recollection is that no other form asks that question.

Q. Now, Mr. Hayes, returning to the case of 144, 118 and 134 Bryant Street, do you recall when I had those hearings before you, my calling your attention to the fact that the colored people on Adams Street were paying a much higher rental?

A. Your cases were heard back in 1943, Mr. Urciole. I can't say that I recall your conversation, but I know as a fact that at that — there were negroes on Adams Street that were paying higher rents than the particular applicant in your case was paying on Bryant.

Q. How much more?

A. They were paying \$62.50 and \$65; that is my recollection.

Q. And the Bryant Streets were paying —

A. \$40 and \$48.

Q. And —

A. Whatever the other one was.

Q. Now, Mr. Hayes, what was your answer to me, to my statement that it was outrageous for houses on  
545 Bryant Street, which were far better than the houses on Adams Street, and yet were rented for \$30 to \$35 less, the Bryant Street houses being rented to whites, the Adams Street houses being rented to colored?

A. I don't know. I can't recall any conversation two years ago.

Q. I will try to refresh your recollection.

Answer yes or no; take your time.

The Court: You are not trying to impeach your witness, are you, Mr. Urciolo?

Mr. Urciolo: No, Your Honor. I said "Answer yes or no; take your time."

The Court: What is the purpose of this, unless it is to impeach him?

Mr. Urciolo: I am merely trying to refresh his recollection, to ask him if he recalls making this statement:

By Mr. Urciolo:

Q. Do you recall, Mr. Hayes, making this statement to me—that the negroes always pay higher rentals than whites and did so in 1941?

A. No, sir.

Q. Do you recall, do you have the records Mr. Hayes, of the decision in the Municipal Court of my appeal in your cases?

A. Just a minute, I will see (consulting files).

These records that I have are only the records of the Office of the Administrator of Rent Control, and go as far as the Administrator's decision. I see no copy of the opinion of the Municipal Court—no notation in the record—just a minute; I think I have it.

Q. I am referring to the Bryant Street cases.

A. I have the Court decision in Case No. 56, Rent Appeal No. 56 from the Municipal Court.

Mr. Gilligan: What is that house?

The Witness: It is the house occupied by Benjamin Harding and Charles G. Huting, whatever address that is.

Mr. Gilligan: What address is that?

The Witness: Our record shows that it is 118 Bryant Street, Municipal Court order does not show what address it is; it says "In the opinion of the Court that is the address. It is 118 Bryant Street."

By Mr. Urciolo:

Q. And your decision was affirmed?

A. The decision of the Administrator was affirmed, the Administrator having affirmed my decision.

Mr. Urciolo: No further questions.

## Cross-examination.

By Mr. Houston:

Q. Mr. Hayes, you are also a member of the bar?

A. Yes, sir.

Q. Can you give me—You have stated that usually the negro's property had been renovated and that is the  
547 reason, one of the reasons, why the rent ceiling is raised?

A. I can only give you what I have found to be my experience in the cases that I have handled. I have had a number of cases involving whites moving into—colored moving into an established white neighborhood. One of the bases for the increase has been capital improvements made to the property, usually in a great number of cases I have actually inspected the houses to ascertain the actual extent of improvement.

Q. Pardon me—Go ahead.

A. I have found, from my observations, that the colored pay more than the whites in that particular neighborhood, but that a good number of the cases show that the house occupied by the negro has been rehabilitated.

Q. Well, now, that is true—what do you call an established white neighborhood?

A. My term is very loosely used, but a neighborhood which is predominantly white.

Q. All right. Now, isn't it true also, that in a neighborhood which is either mixed, or where there are whites living in a negro neighborhood, that your statement applies to houses, I mean to say wherever negroes move into a house occupied by whites, the houses are usually fixed up a little bit for a negro, and higher rent charged, regardless of whether it comes into an established white neighborhood or a mixed neighborhood, or what?

548 A. Well, I don't quite understand your question, Mr. Houston. We have other bases upon which we increase the rents.

Q. No; you misunderstand me. I am simply trying to explore your statement as to an established white neighborhood and find out whether—

A. (Interposing:) The capital improvement is the base for increase in rent, no matter where made.

Q. Yes, so that what you are saying applies to when a negro has moved into a house formerly occupied by whites, no matter whether an established white neighborhood or mixed community or whites living in a predominantly negro neighborhood, that would still be true?

A. I would say that it would be.

Mr. Houston: I have no further questions.

### Cross-examination.

By Mr. Gilligan:

Q. The reason for the action taken by your office in these houses on Bryant Street, keeping the rents down to \$35 and \$40 and \$48 was that they were the rents that were being charged on January 1st, 1941 for the same houses; is that not correct?

A. Just a minute, please. I will have to go back to my order (going through file). The rent that we established as a legal maximum ceiling was the rent that was  
549 being collected as of January 1st, 1941.

Q. That is the law, is it not?

A. Yes, sir. Of course, if there was a proceeding, if there was grounds established, the rent could have been increased.

Q. If there were improvements put on the property subsequent to January 1st, 1941, that made it a great deal more valuable, you people would take that into consideration?

A. Yes, sir.

Q. In these three houses that Mr. Urciolo called to your attention, on Bryant Street, was there any improvement, or improvements put on them that might, despite the improvements that might be put on them—did you still keep the rent down to January 1st, 1941?

A. We found no such improvements.

Q. So the rent ceiling was kept the same as on January 1st, 1941, because that was the law?

A. Yes, sir.

Q. And on Adams Street you spoke of several houses at \$65 a month, 142; \$65.50 a month, 135; \$75 a month,—those rents were allowed because of the fact that on January the first, 1941, they were renting, or being charged for those properties, or improvements had been made to them of such nature that the increase was justified?

A. Mr. Gilligan, I only handled the cases on  
550 Adams, and I can't say why they were so fixed, except  
that in investigating the official record of the office,  
I found them that way.

Q. Let me put it this way: Had there been no improvements made on the house, your office would not have allowed, or have been allowed under the law, to increase the rent over what was being paid on January 1st, 1941?

A. If you were to include on that, "or other basis," I would say yes.

Q. What are the other bases?

A. Peculiar circumstances, as of January 1st, 1941, plus the fact that comparable property rented for more, increase in the cost of operation and maintenance,—I think that those three would probably cover it.

Q. Your office doesn't make any distinction under this law as to whether a person who is applying is colored or white?

A. No, sir, we do not.

Q. Or whether the tenant in the house is colored or white?

A. No, sir.

Mr. Gilligan: That is all. Thank you, Mr. Hayes.

Mr. Houston: I would like to ask a few more questions on that.

551 Further cross-examination.

By Mr. Houston:

Q. You didn't handle the four cases on Bryant Street yourself?

A. Yes, sir.

Q. Did you have occasion to go and make personal inspection of the premises?

A. No.

Q. So that your decision was made from the testimony and not from personal inspection?

A. That is correct.

Q. And you do know what actual condition the houses on Bryant Street that you handled were in, or was in?

A. I know what they testified they were in; I know what both parties testified they were in.

Q. Now, do you know what the tenant, respondent, testified they were in?

A. I will see if my notes are in here. When I say I know,

I mean that it is my procedure to take notes at the hearing and when it comes time to make a finding, I use my notes and make a finding. I don't have my notes here, but I think a statement of evidence was prepared; just a minute (looking through documents).

In answer to your question, Mr. Houston, the only thing I can say is—there was some evidence put into the  
552 record that the petitioner had spent \$200 on the premises.

Q. No testimony about the condition of the premises by the respondent?

A. The record doesn't show it.

Q. Does it indicate whether 118 Bryant Street was a three-story house or not?

A. Two and a half story brick dwelling, with three rooms on the first floor, and three rooms and bath and porch on the second, and a very large room on the third.

Q. On Adams Street, does the record indicate whether those houses, the records which you have, are two-story or three-story houses?

A. The record indicates that 140 Adams,—that is a two-story house.

Q. And the others?

A. The record indicates 135 Adams Street is two-story.

Q. I didn't hear you.

A. Two-story.

Q. 140 and 142, do you have those?

A. I have 142 and 132.

Q. All right.

A. The record indicates 142 is a two-story house, and that 132 is also a two-story house.

Q. In other words, all the houses you had on Adams  
553 Street are two-story?

A. Those houses I just gave are two-story; yes, sir.

Q. Would you go to the other houses on Bryant Street and tell me whether they are three-story or not?

A. What other houses?

Q. The other houses of record which you have here?

A. I was testifying about 118—that is two and a half story, brick.

Q. Two and a half stories?

A. Yes, sir. The record does not disclose what 144 is.

My recollection is that it is the same as 118, two and a half or three stories; I am not sure.

140 Bryant Street—

Mr. Gilligan: 134 and 144 were the two houses brought to our attention.

The Witness: What?

Mr. Gilligan: 134 and 144.

The Witness: 134—

Mr. Gilligan: I have the case number, if it would help.

The Witness: I have them, now.

The record does not disclose as to what 134 Bryant Street is.

By Mr. Houston:

Q. Mr. Hayes, are the Adams Street houses close enough and the neighborhood conditions sufficiently similar so that rents on Adams Street would be considered comparable rents to the rents, in making up your mind as to rents on Bryant Street?

A. In arriving at any findings that I would make, I would consider them sufficiently close enough to be comparable.

Q. And would be in the same general neighborhood?

A. Yes, sir.

555 Mr. Gilligan: I will ask this: If the houses that you have referred to on Bryant Street, 118, 134 and 144, on January 1st, 1941, had been renting for somewhat higher figures—maybe a good deal higher figures—would they under your law and your practice upon the application of Mr. Urciolo have been placed at the ceiling, at the rate which they were paying on January 1st, 1941, had no improvements on these properties, or these other items entered into the picture?

The Witness: We would not even have had to place them at the ceiling. By operation of the law that would have been the only rent collectable.

Mr. Gilligan: That is all, thank you.

556 Thereupon, FREDERIC E. HODGE was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

## Direct examination.

By Mr. Houston:

Q. Mr. Hodge you have already testified and I am calling you back now. I wanted to go into the matter of the neighborhood with you.

Are you a native Washingtonian, sir?

A. No, sir.

Q. A native of where, sir?

A. Lowell, Massachusetts.

Q. And in Washington how long, sir?

A. About forty-two years.

Q. Did you live in the vicinity of the 100 block of Bryant Street prior to the time you bought your house?

A. No, sir.

Q. Were you acquainted with the neighborhood at all prior to the time that you bought your house?

557 A. No, sir.

Q. Your acquaintance therefore dates from the time you purchased in 1909, and moved in?

A. Yes, sir.

Q. Now, at the time that you purchased what was the surrounding describe the surrounding area so far as being built up or not being built up is concerned.

A. The houses on Bryant Street from the alley—that is west of First Street—

Q. (Interposing:) Beginning, say, at 114?

A. 114, that is right, Mr. Houston. —to 130; were two-story and a half houses. They had been built, I understand, some years. Then, they had built six houses, two-story houses of which I occupy one, and I bought the first house when they went on sale. They were built by Martin Bray. Then Mr. Bray had purchased the land and I think he built six houses more.

Now, just a minute; let's see. There were five houses built first, and I bought the first one, and then I think Mr. Bray built six houses more.

Q. Mr. Bray built, beginning at 132, didn't he?

A. 132—that is right.

Q. Middaugh & Shannon had built from 114 to 130?

A. I think so.

Q. Then Bray built from 142 down to where? He built first from 132, 134, 136, 138, 142, in the block of six houses of which you occupied one; is that correct?

558 A. No; I think it is the other way, Mr. Houston.

There were five houses built first, and then he built the other six.

Q. He built 132, 134, 136, 138 and 140?

A. That is right.

Q. In the group of houses, one of which you occupied?

A. 136.

Q. And that was the first operation of Bray in that block?

A. Yes, sir.

Q. Now, after that, he built 142, 144, 146, 148, 150 and 152?

A. That is right.

Q. When did he build those?

A. I think he started operations, we went into our home on the 6th of October, and I think he started operations withing a month or two after I moved in.

Q. Would you say approximately around 1909?

A. The last of 1909.

Q. All right, now; the houses that had been built from 154 down to the end of Second Street—were they already there at the time you moved in?

A. They were already there. I think the first houses were built by Howenstein.

Q. Let's go back to Adams Street. Was Adams Street entirely built up in the 100 block?

A. It was.

Q. And they were built by whom?

A. I don't know.

Q. They were already built up by 1909?

A. That was built up by 1909, yes.

Q. The 2300 block of First Street, was that built up at the time that you first came in there?

A. That is where Mr. Gilligan lives?

Q. Yes.

A. That was built.

Q. Completely built up?

A. Completely built up, yes, sir.

Q. Now, take Flagler Place; was that completely built up when you first moved in?

A. Yes, sir.

Q. All the way down to U Street?

A. I believe so.

Q. Where was the Green House?

A. Just a minute. That is—was right where that colored apartment stands now, on the corner of Second and—not Adams! What is the street below Adams?

Mr. Urciolo: W Street.

The Witness: Yes, I think it was W Street.

560 By Mr. Houston:

Q. Then, how much property had been built up south of Adams Street, west of the 100 block—any more houses been built up on W Street? The W Street property, was it just a farm?

A. Oh, from the store on Flagler Place and W, the green house was right back of that running parallel with the alley, and then the owner of the green house—I believe his home was on the corner of Second and W.

Q. Was the block different between W and V, on Second? Was the block built up on Second Street between V and W, where the little apartment now stands?

A. No, not that I remember.

Q. Well, now, take between—just a minute; V and W Street jog at Second Street do they not, in the sense that they do not go straight through, but you have to make a curve?

A. Coming up to Second Street, you have to come around and go up Elm Street to go west.

Q. Yes. Now, were the houses opposite the apartment built up on the west side of Second Street?

A. No, no.

Q. The west side of Second Street—had it been built up?

A. No, it had not; in fact there was nothing but a path from Bryant Street, the street having never been cut  
561 through, to the—I believe the school house—there was nothing but a path there.

Q. Say from Bryant to Elm, then; is that correct?

A. Bryant to Elm, down that way; yes, sir.

Q. And as far as you could see—Strike that.

Going on down to Second Street, opposite the school, was that built up, on the west side opposite the school?

A. I believe it was, Mr. Houston.

Q. Would it help you if you had a map?

A. Well, I don't know.

Q. I mean—

The Court (Interposing): He seems to be getting along all right.

The Witness: I guess I can get along; if I don't, ask me again.

By Mr. Houston:

Q. You think Second Street was built up opposite the school?

A. I think it was.

Q. How about U Street between First and Second?

A. That was built up.

Q. V Street, between First and Second?

A. Partly built up.

Q. Where did the houses end—

A. Just a minute.

562 Q. Between first and Second?

A. First and Second—that is where—no; W is where the green house was. No, I don't think there were many houses built in that square. I think they were built after—later.

Q. Your best recollection is, then, that they were not built?

A. I don't think they were built on Second Street, south of V Street.

Q. And not built up on V Street, either?

A. Between Second and First Street there were some; but there was a house on the corner of Flagler, but west of Flagler on V Street, I don't think there were any houses to Second Street.

Q. Now, at the time that you first moved—wait a minute; let me ask you this: You said that Second Street was a path between Bryant Street and the school. Was there a street south of the school?

A. Flagler Street.

Q. To Second Street?

A. Yes.

Q. Was a path between Bryant Street,—was there a street to Second Street paved or anything, from south of the school?

563 A. From the school south, the street had been improved, but north of the school I think there was just a path. In fact, there was a lot of shrubbery, that is, scrub growth of oak and things of that sort.

Q. Now, when you first moved there in 1909, so far as as you could see, there were whites all the way down to Rhode Island Avenue; is that correct?

A. I would say there were; yes, sir.

Q. Would it also be true, all the way down to Florida Avenue?

A. I couldn't say.

Q. But to Rhode Island Avenue, you would say?

A. I would say down to Rhode Island Avenue they were all white.

Q. Rhode Island Avenue north?

A. North, yes.

Q. Now, can you trace the gradual spread of the negro population northward from Rhode Island Avenue; I mean to the best of your recollection, of course?

A. You mean as to date?

Q. As near as you can, roughly. I mean, in terms of years, thirty years—tell us when—

A. I would say that within perhaps the last fifteen years the encroachment had been made.

Q. Well, now—

A. (Interposing:) I don't think, previous to that, it had.

564. Q. Would you say, Mr. Hodge, that it was a gradual and steady encroachment, if you want to use that term, south, from the south to the north?

A. May I illustrate?

Q. Yes; yes.

A. Yes, I would say so, but perhaps it has been more within the last ten or twelve years.

Q. All-right. What I am getting at is this: Would you say that what happened was in substance that negroes would move into one street, the houses then, they would move north to the next street, and come up just like that?

A. Yes, sir.

Q. So that it hasn't been in a sense of them spotting here and there; it has been more of a mass sweep, would you say that that would be a correct statement?

A. Gradual.

Q. Gradual mass movement?

A. Yes.

Q. Would that be a fairly accurate statement?

A. I would say so.

Q. And that no negroes or persons that you considered negroes moved into Bryant Street east of 154 Bryant Street until practically all of the houses on Adams Street had gone, had been occupied by negroes, if you know?

A. I wouldn't say.

565-566 Q. Well, is it true that there was a general occupancy by negroes on Adams Street and all streets south of Adams Street between First and Second before negroes began moving on Bryant Street into the 20 houses which are under covenant?

A. State that question again.

Mr. Houston: Will you read it, and if it is not clear I will rephrase it.

(Record read by the reporter.)

The Witness: No, there were whites on Adams Street; I would say there were whites on Adams Street before they started moving into Bryant.

By Mr. Houston:

Q. My point is: Before they started moving into Bryant Street, had most of the Adams Street houses been occupied by whites and gone over to colored?

A. Gone to colored.

Q. So the negroes had practically completely occupied Adams Street before they began moving into Bryant Street in the covenanted area?

A. Yes, sir.

567 Q. Mr. Hodge, we just about cleaned up the general development of the area, and the migration of negroes. Let me get down to Bryant Street, itself.

What, if anything, did you do when the negroes began to move into the 100 block of Bryant Street at first, in the houses 154 down to Second Street?

A. Nothing, because there is no covenant for those houses.

Q. Did you attempt to get a committee of white owners together to put in a restrictive agreement?

A. I believe—there was a movement on foot to do that.

Q. You mean that was attempted?

A. I think that was attempted.

568 Q. And it did not succeed?

A. I couldn't say, Mr. Houston. I don't remember.

Q. Now, have you been disturbed by the presence of these negroes at 154 Bryant Street yet?

A. No, sir.

Q. Has it any way affected the sociability of the neighborhood, the 100 block of Bryant Street—that presence, from 154 west?

A. They stay by themselves and white folks stay by themselves.

Q. Then what is the answer? Has it affected the sociability of the neighborhood, the square,—their presence?

A. I would say it has.

Q. It has?

A. Yes, sir.

Q. So that even if the injunction were issued, you would not be able to create an entire white square in the 100 block of Bryant Street?

A. We couldn't—

Q. That is to say, the proportion would be at least 11 over 31 houses being negro, over one-third of the houses would be negro?

A. One third, yes, sir.

Q. Even if this injunction were issued?

A. Yes, sir.

569 Q. Now, have you had any trouble whatsoever with the negroes in the properties which are in these two suits?

And Mrs. Hurd, Miss Stewart, Mr. and Mrs. Savage, Mr. and Mrs. Rowe—have you had any trouble with them?

A. Nothing so far.

Q. The answer then is no?

A. No.

Mr. Urciolo: I object, Your Honor. There is no testimony that the Hurds are negroes. If you want to make that exception, I will withdraw the objection.

The Court: The objection is overruled. That was Mr. Houston's language.

Mr. Houston: I think if your Honor please, let it be understood for the purpose of the record that I am taking the allegation as to color as the plaintiffs have made it. I think my position is sufficiently clear not to urge that,

so—

The Court: The record may stand as made.

Mr. Houston: Well, as to that, we will clean it up.

By Mr. Houston:

Q. You have had no difficulty with persons who are defendants in these cases?

A. No, sir.

Q. Have they stayed to themselves and have you stayed to yourselves,—you and Mrs. Hodge stayed to yourselves, then?

570 Mr. Gilligan: Let him speak for himself.

The Witness: State the first part of that, Mr. Houston. I didn't get it.

Mr. Houston: Will you read it back?

(Record read by the reporter.)

The witness: I see. Yes, they have stayed to themselves. I thought you said "s-t-a-t-e-d," stated.

Q. Now, it isn't the color of the individual, apart from the question of race, which disturbed you in Bryant Street, is it? In other words, an Assyrian might be darker than a negro, but it doesn't disturb you on Bryant Street?

A. No; I will answer that question with a proviso, and that is, it is the covenant that is to be upheld.

Q. Now, leave out the question of the covenant. I am talking about your own personal attitude.

A. Yes.

Q. The question is: Does the color of the Assyrian disturb you on Bryant Street?

A. No.

Q. Even though he may be darker than a negro?

A. No.

Q. Does the color of an Assyrian affect you, affect the sociability of the block of Bryant Street, even though he be darker than a negro?

571 A. I wouldn't say so.

Q. Now, suppose that a person moves into Bryant Street who can't be distinguished—identified either as being white or as being a negro. Would that affect the sociability of the block?

A. It would be questionable.

Q. Please say what you mean.

A. Well, we know whether they are white or colored.

Q. Until you knew whether they were white or whether

they were colored, would that affect the sociability of the block?

A. I couldn't say that it would.

Q. And you can't say that it would not?

A. No, as to the color, it would have to be definitely known.

Q. In other words, until it was definitely known, it would not affect the sociability of the block?

A. No.

Q. Just living there and up to that point, up to the moment it was definitely ascertained that that person had negro blood, I understood your answer to be that it would not affect the sociability of the block?

A. Yes.

572-574 Q. It would not?

A. It would not.

Q. Now, I am saying suppose that persons still keeps entirely to himself or herself, pursues the same course of conduct, just coming in her house, going out of her house, about her business, saying nothing to anybody, but just living in her house,—suppose that person pursued the same course of conduct afterwards as before it were definitely known that that person had negro blood, how would the fact that it became known that the person had negro blood, if there was no other factor changed, affect the sociability of the block?

575 The Witness: Well, I say—I would say that it would affect.

By Mr. Houston:

Q. I asked you how?

A. Oh, how—pardon me.

Well, I don't know as I could say, Mr. Houston. Just how it would affect it—in a general way.

Q. How long did the Marchegiani house remain empty before a white tenant moved in?

Mr. Gilligan: I object to the question, if Your Honor please. That was a perfectly proper question to have asked Mr. Marchegiani or Mrs. Marchegiani, but I don't see it is pertinent as to this witness, if he knows.

The Court: He may answer.

The Witness: I don't know.

The Court: He said he doesn't know.

By Mr. Houston:

Q. The tenants who moved into the Marchegiani house are some relation either to you or to your wife, are they not?

A. No, sir.

Q. Are the tenants who moved into the Marchegiani house known to you or to your wife?

A. No.

576 Mr. Gilligan: Of course, he speaks for himself.

Mr. Houston: Yes. I mean, as far as he knows.

By Mr. Houston.

Q. Do you know the tenants who moved into the Marchegiani house?

A. I do not.

Q. Do you know whether Mrs. Hodge knows the tenants who moved into the Marchegiani house?

A. I don't think she does.

Q. Did you consider from the observation of the tenants who moved into the Marchegiani house whether they are white or colored?

A. I have not seen them. I think they are white.

Q. You think they are white?

The Court: Wait a minute. You have not seen them?

The Witness: Your Honor, if the person I have seen, going in and out—I have seen people going in and out, but I don't know whether live there or not.

The Court: All right.

By Mr. Houston:

Q. Then, you do not make it your business to make inquiry as to each new person moving into the block, as to who he is and what he is? I mean, you do not take the initiative to make that inquiry?

A. No, I do not. I have not.

577 Q. So far as you are concerned, the person moving in or moving out does not affect the sociability of the block, just as a fact of moving in or out?

A. No, I would not say it would.

Q. So that people could change repeatedly and it would not affect the sociability of the block, leaving the question of race apart?

A. I wouldn't say that it did,—no, sir.

Q. When you state in your complaint, paragraph 10, that the negroes owning, holding deeds and conveyances and occupying the property would be injurious, depreciative and absolutely ruinous of the real estate owned by the plaintiffs—what did you mean?

A. Well, if the property was sold to negroes, I think the property would depreciate in value, as far as having them further occupied by white persons is concerned.

Q. So far as you know, what white person has moved out of the block since negroes moved in, except the Marchegianis, where such white did not move out under pressure of either a notice to quit, or a Landlord & Tenant Court order?

578 A. I don't know.

Q. So far as you know, no such—no white person has moved except the Marchegianis and those persons who moved under notice to quit served on them by the new owners.

A. As far as I know, I can't call them to mind.

Q. Do you maintain that the purchase of their homes by the negroes has lowered the market value of your property?

A. I do

Q. On what do you base that? I am talking now of market value, sale value.

A. There being a covenant in my deed which would prohibit me from disposing of my property to negroes.

579 Q. On what do you base your answer when you say that it would lower the purchase of homes—that is, the purchase by negroes would lower the market value or sales value of your property?

A. Didn't I just answer that?

Q. Not to my satisfaction.

Mr. Gilligan: Will the Court have the answer read, what he did state, so that Mr. Houston may have that before him in asking his new question?

The Court: What was your answer? I just don't quite recall?

The Witness: I stated, if I am not mistaken, that the sale of my property, it having a white covenant in the deed, that the sale, I wouldn't be able to dispose of my property to advantage unless I sold to a negro.

By Mr. Houston:

Q. Well, does it follow that you could not get just as much if you sold to a negro as if you sold to a white?

A. I don't think a white person would want to buy the property.

Q. So then you could sell—I think you had finished your answer.

580 A. Yes.

Q. But you could go to a negro and get the same money which would not be marked as to whether it came from white or colored, could you not?

A. That remains to be seen.

Q. Do you have any facts, or any other experience on which you could base your statement that a purchase by negroes would lower the market value of your property?

A. Only in a general way.

Q. By "general way" what do you mean? "General way"?

A. Property that has been disposed of—where there has been covenant, or where there hasn't been covenant.

Q. Has that property been disposed of for less than it would have been if negroes had not bought in there?

A. I would say that a white person would not pay the money that property would be worth if they knew that negroes were liable to come in as their next door neighbors.

Q. Well, would a negro pay you what the property was worth under the circumstances?

A. Possibly they would.

Q. So the market value would not be lowered, would it, in the sense of what the property would bring in the market?

A. I would not say that it would.

Q. So therefore the purchase of the property by negroes would not lower the market value of the property in the sense of what it can bring in the market? I am not talking about whether the purchaser be white or colored, but what the property would be worth in the market?

The Court: Isn't that the same question that you have just been exploring?

By Mr. Houston:

Q. Mr. Hodge, you are from Massachusetts, I am informed.

A. Yes, sir.

Q. In Lowell, Massachusetts, do negroes and whites live in the same block without any difficulty?

Mr. Gilligan: I object to the question, if your Honor please. I do not see that it has any bearing here.

The Court: Sustained.

Mr. Houston: I should like to find out—I mean I should like to develop his attitude, just as I found out so far as the Italians were concerned, your Honor, and that is the purport of the examination.

The Court: Objection sustained.

Mr. Houston: No further questions.

582 Cross-examination.

By Mr. Urciolo:

Q. Mr. Hodge, how much would you take for your property today, if it were for sale?

A. Mrs. Hodge stated \$12,000, but I would not take less than \$15,000; the improvements that I have put on it.

Q. Which improvements have you put on it?

A. 40-pound tin roof; built double back porch; 12 by 14 feet, three stories high; all new brass water pipe, and new furnace.

Q. Altogether, how much did the improvements cost you?

A. Well, I would say at least four or five thousand dollars.

Q. That amount was spent how long ago?

A. Most of it was in the last six or seven years.

Q. Now, how much did you pay for the property?

A. \$4,350.

Q. So altogether the property stands you around \$9,000?

A. I would say so.

Q. But if I offered you \$9,000 today for the property would you take it?

A. I would not.

Q. Then how do you justify your statement that it is ruined; that the presence of negroes has ruined it?

583 A. Because I don't want to sell it; it is my home.

Q. Now, Mr. Hodge, when Mr. Savage came to your house to get the key for the house next door, did you ask him if he was a negro?

A. No, sir.

Q. Did Mrs. Hodge ask him if he was a negro?

A. I don't know.

Q. You were not there when he came?

A. I came to the door and he asked to get the key for the next door. Mrs. Hodge left the room and went to the front door and handed him the key. I don't know what the conversation was.

Q. No conversation took place?

A. I don't know what the conversation was, because I was in another room.

Q. Now, Mr. Hodge, will you please tell me this: During the last five years, in the 100 block of Bryant Street,—have there been any vacancies?

A. You mean—

Q. (Interposing:) If you know.

A. You mean where tenants have moved out?

Q. Yes. And have they remained vacant for sometime?

A. I don't think there has. I don't recall any. I don't call to mind any right now.

Q. You stated—

584 Mr. Gilligan. What was that?

By Mr. Urciolo:

Q. Mr. Hodge, you stated on direct examination that you had not seen Mrs. Hurd before filing this complaint. Is that correct?

A. I stated that?

Q. Yes.

A. I don't remember seeing Mrs. Hurd until I saw her here in the courtroom, within this week. Mrs. Hurd has been in the courtroom this week.

Q. My question was—when you signed this complaint had you ever seen Mrs. Hurd before?

A. No, no.

Q. Then how did you know she was colored? Your complaint states that she is of the Negro race.

A. Yes.

Q. How did you know she was colored?

A. I presumed she was from the fact that her husband is a negro.

Q. How do you know her husband is a negro?

A. I judge from the color.

Q. But as a matter of fact, you do not know,—or did not know,—what Mrs. Hurd was; is that correct?

A. No.

585 Q. Now, Mr. Hodge, how did you determine that Mr. Hurd was a negro?

A. I have no way of telling, except by looks and color.

Q. Is his color any different than, say, and East Indian?

A. I wouldn't know.

Q. So you took a guess.

A. I looked—he looked to me like a negro, therefore I presume he was a negro.

Q. Now, Mr. Hodge, would you say his color was any different from an American's Indians. Plenty of American Indians are in Massachusetts, that you must have seen.

A. Yes, and he would be much darker than an American Indian was; his complexion would be much darker than an American Indian's was.

Q. All American Indians?

A. On an average. An Indian is supposed to be a red man.

Q. Now, let me see if I understand you correctly: Your statement is that you had never seen Mrs. Hurd when you signed this complaint that you put out under the grounds that she was a negress, because you took it for granted that because you thought Mr. Hurd was a negro, therefore Mrs. Hurd was a negro?

A. I did.

586 Q. When Mr. Giancola bought his house, did you have any suspicions about him, as whether he may have had a spot of negro blood?

A. I did not.

Q. One further question: Isn't it a fact today, Mr. Hodge, that with the exception of two or three white persons scattered in the vicinity, everybody west of First Street, except

these twenty houses on Bryant Street, that everything is solidly colored?

A. I couldn't say.

Q. Could you say that it was predominantly colored?

A. I couldn't say.

587 Q. Would you say that it was predominantly white?

A. I would judge so.

Q. Everything was from First Street?

A. Well, how far south?

Q. From Rhode Island Avenue to Bryant Street?

A. No, I wouldn't say that.

Q. Then what would you say?

The Court: Well, you had better ask the question.

By Mr. Urciolo:

Q. My question was: To date, with the exception of a half a dozen white persons, everything west of First Street from Rhode Island Avenue to Bryant Street, is colored, except these twenty houses on Bryant Street?

A. I wouldn't say that they are all colored.

Q. What would you say?

A. I would say that they are mixed up; colored and white; but I wouldn't say which predominates.

Q. You mean fifty-fifty percent?

A. I would not say that because I don't know.

Mr. Gilligan: I have no questions.

Mr. Houston: I would like to ask a few.

Redirect examination.

By Mr. Houston:

Q. What is a negro about Mr. Hurd's features?

588 A. I couldn't say unless I saw her—oh, Mr. Hurd. I thought you said Mrs. Hurd. Pardon me.

Mr. Houston: Go up there (addressing Mr. Hurd) and sit down, Mr. Hurd.

(Mr. Hurd takes seat in jury box near witness).

The Witness: I would say the nose, for one thing.

By Mr. Houston:

Q. You mean that high nose is negroid in a person?

The Court: He has not said that was a high nose.

Mr. Houston: I asked him, he didn't say that it was a high nose, I did.

The Court: But your question implied it.

By Mr. Houston:

Q. Would you say it was the height of the nose that is negroid?

A: No, sir; I would say the nostrils, the lower part of the nose.

Q. And his hair; what is there negroid about his hair?

A. His hair is more or less straight.

Q. Is that a negroid characteristic?

A. Not always.

Q. Well, what I am trying to get at is—does his hair have any negro characteristics?

A. What?

589 Q. Does his hair have negroid characteristics?

A. No, I wouldn't say that at all.

Q. And it is your testimony that—his nose and his skin—

A. I would say that it had.

Mr. Houston: All right. No further questions.

Mr. Gilligan: No further questions.

Thereupon ROBERT H. ROWE was called as a witness for and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

590 Direct examination.

By Mr. Houston:

Q. State your full name, Mr. Rowe.

A. Robert H.—Robert Harris Rowe.

Q. And your present address.

A. 118 Bryant Street, Northwest.

Q. And how old are you?

A. 46. I will be 46 the 25th day of October.

Q. And are you a native American citizen?

A. I hope so.

Q. Born in this country?

A. Yes, sir.

591 By Mr. Houston:

Q. Did you know your grandparents?

A. No, I didn't.

Q. Just knew your mother and father?

A. Mother and father, they died years ago, long before I knew anything about that.

Q. They were natives of what states, your mother and father?

A. North Carolina.

Q. What state of the Union—and you are from North Carolina?

A. North Carolina.

Q. How long have you been in the District of Columbia?

A. About twenty-one years.

Q. What is your work?

592 A. Well, I does work for the Washington Water-proofing Company, 601 South Capitol Street. We do general repairing and general building.

Q. And what is your particular classification; helper, carpenter, or what?

A. Well, just—well, I can't tell, hardly. Helper, more than likely.

Q. Yes. Now, your wife, Mrs. Rowe, is she a native American citizen?

A. She is.

Q. And where is she from?

A. Rocky Mount, North Carolina.

Q. How long has she been in the District of Columbia?

A. We came here the same thing, same length of time, only I came about three days before she came.

Q. What does Mrs. Rowe do? Does she work?

A. She does.

Q. What is her profession, if any?

A. She is a registered nurse, and works at Freedmens Hospital.

Q. Now, Mr. Rowe, when did you purchase your property on Bryant Street?

A. I think it was about the 1st of March.

Q. What year?

A. Of this year.

593 Q. And how did you happen to purchase on Bryant Street?

A. Well, I was living at 50 Florida Avenue, and that place was sold and I was forced to vacate, served notice the place was sold and to vacate within 30 days, and so I went on and just quit work and just went on out, and kept going, until I could find somewhere to move to, couldn't find nowhere for rent, neither to buy, so far, for better than a week. I didn't give it up, though. I kept going. I told my wife, "Well, I won't work any more until I do find something," so I went to some four or five real estate places. First I went to Torres Real Estate, North Capitol and Quincy Place, and he says, "Well, I don't have a thing," and I went to another real estate place down on New York Avenue, between 10th and 11th, I forget the name of the real estate company, only it's on the left-hand side of New York Avenue between 10th and 11th, but they had one place, but that was in an apartment, a small place up on Lincoln Road, and I wasn't successful there, so I went to—well, I was so discouraged, and I went back home and told my wife, "Well," I said, "I hadn't found a thing," and I took the evening paper and found in that, I saw where Slaughter & Company had places at 17th Street, so I saw they had some places out near, and I told my wife where Slaughter & Company had places advertised for sale and I said, "I guess I will go down there," so I did, and asked them, and they said, "Yes, We have places for sale," and I said, "Referring to places you have advertised out Northeast," I said, "How about them?" He said go out and take a look and I went out there. They were small places. Little two-room kitchenettes, well, no, I just—Well, I considered, I still didn't have nothing, and I went back and he said, "How did you like that?"

I said, "I didn't like that."

He said, "I have a place up on 14th and W" he says, "suppose you take him up and see that," and I went up there and Mr. Harrington, he is a real estate man, taken me up there and I looked at that and that was a small place.

Q. Incidentally, is Harrington white or colored?

A. He is white.

Q. Is Slaughter, the real estate firm, is that white or colored?

A. White, and so I wasn't successful there, so I went up on 11th Street; he showed me a small place up on 11th, I

couldn't consider that because I could see the stars and moon shine through the roof of the kitchen, and so I told him, I said, "I don't want to live in nothing when it rains," so he said, "Well, I tell you," he looked on his file, he said, "I have a list of them down here on Bryant Street. Suppose we go down there."

And so we went down on Bryant Street and he showed me, we stopped at First, at 153 I think it was, or was it 52?—and he met the lady at the door and he told her, says, "I want to show this house," and she objected. She told him she wasn't—he wasn't coming in there. He says, "Well, I have a list here" and "the house is to be shown. It is for sale." And, she says, "Well, you won't come in here."

Well, I says, "Okay." Well, I go on up the street, if your Honor please, and we went on up on Bryant Street, if your Honor please, and he said, "Now, there is a colored family lives here at 116," he said. "Now, I don't think the family is at home, the Hardings, at 118."

He knocked and knocked on the door and said, "We will go to 116," so a lady came to the door, and he says, "Do you mind this gentleman, I want to show him this house," he says, "It is similar to the one next door. I think he would like the one next door," he says.

"It is for sale, too." She said to come in and she opened the door and we went through the house, and up the stairs, and downstairs and started down into the basement, and the dog run us back.

I said, "Never mind." We went outside and he said "118 is the very identical thing with this house, the same thing." "Do you think you would like that? It has got the amount of room you say you think you want."

I said, "Yes, I think I would like that very good."

He said, "Okay" he says, "Where is your wife?"

I says, "She hasn't come from work."

He said what time would she be off. And I told him and he looked at his watch and said, "It is time for her now."

So I said, "We'll go pick her up," so we went down and picked up my wife and she says she thinks very much she would like it. He said, "Now, in case somebody else would want to cut in and tie the deal, we'll go on down to your house and you just make me a partial payment to tie the deal so nobody else he can get it until you finally decide or not."

We went to our house and went in and I said, "How much money do you require?" and he said, "\$100, \$200, or \$250, just to tie the deal, to keep somebody else from getting it."

I paid him \$250. He said, "Okay, I will draw up a contract for you now."

He sat at the table and drew up the contract and said "when you come—when can you come up to the real estate place?" And I said the next evening, so the next evening I went to the real estate place and he told me just what the house was clear and listed for sale and the others, he gave me four more and said I could look at them if I wanted to and if I decide not to buy that one, any other one, and my money would be refunded, so we still preferred 118.

Q. Now, before you bought 118, did you pay any attention to whether any other negroes were in that same block?

A. I did.

Q. All right. What did you find out?

A. I found out on the lower end of Bryant Street was about four or five, I think there is a colored family, next door, where this lady refused to let us go in.

Q. Had you had any trouble in your neighborhood since you have been there?

A. No, I have not.

Q. Why have you done—have you done any fixing up of your own house?

A. I have.

Q. What have you done since you have been there?

A. I hauled four tons of dirt and I raised the lawn so far (indicating with hands). It has got to have practically another load to make it up to grade, and those brick columns, you could take a penknife and get a brick out of the piers in either side.

The step up to the door, bricks, were loose, the mortar gone out of them, and I am pointing them up now, and you could push, let's see, there are six stone things there, three on either side, and in fact, Mr. Harding said one fell and he put it back, but it was put in backwards and I did that, so far, and out in back it was just growed up out in the back yard, so much so, well, I guess when the trash man came along that he got a load out of my house. I cut

the back yard out; it has growed up so there was even dry land turtles out there.

Q. Is your property now in better shape than when you went in?

A. Better?

Q. Is your property in better shape now than when you went in it?

A. I should say yes, because I occasionally work on it in the evenings when I come home.

Q. Did you intend to occupy that property as a home, or buy it as an investment?

A. Oh, a home.

Q. Do you have any relatives in the service?

599 A. My wife's brother, Roy. He was in the service.

Q. Did you notice any other negroes in any other — I am not sure that I carry in my mind your answer. Did you notice any negroes or persons who were supposed, or were pointed out to you to be negroes, or thought to be negroes—did you see any in the block?

A. At 116, next door.

Q. And where else?

A. And lower, at the lower end of the street, on down from about 152 on down to the corner.

Q. And then were there negro or persons looking like negroes behind you?

A. On Adams Street?

Q. Yes.

A. Oh, yes.

Q. And—

A. I have a friend living on there, a neighbor of mine, Mr. Harold Eden.

The Court: Just answer the question.

By Mr. Houston:

Q. And had you visited Mr. Eden prior to the time you moved to Bryant Street?

A. I have recently.

Q. Did you anticipate any trouble on Bryant Street?

600 A. No, I have not.

Q. Did you anticipate any trouble before you moved, coming up, on account of the fact that you moved into Bryant Street?

A. To Mr. Eden?

Q. No. Did you anticipate any trouble coming to yourself because you moved to Bryant Street?

A. Oh, no. No, I didn't.

Q. Well, I mean Mr. Gilligan says, if I can paraphrase it—did you expect you were going to have any trouble when you moved on Bryant Street?

A. No, indeed.

Mr. Houston: All right. Your witness.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Rowe, did you ever see me before buying your house?

A. No, I did not.

Q. Did you ever see me at the title company?

A. No, I did not.

Q. Did you ever see me at all before coming to court?

A. Yes.

Q. That last was Yes?

A. Yes. One time.

601 Q. When was that?

A. The 18th of July when you left Small Claims Court over there, I came by the court for the title.

Q. Now, Mr. Rowe, did Mr. Eden tell you that an injunction was issued against him to move out of Adams Street?

Mr. Gilligan: Object, if your Honor please.

The Witness: No, I did not.

The Court: He said no, so let it stand.

Was that all, Mr. Urciolo?

Mr. Urciolo: I think that is about all.

Cross-examination.

By Mr. Gilligan:

Q. Mr. Rowe, you are a negro, are you not?

A. What?

Q. You are a negro?

A. I hope so, sir.

Q. And so is your wife?

A. Yes, sir.

Q. And when you were served the papers by the United States Marshal, the complaint, where were you living?

A. To vacate?

Q. Yes.

A. The 15th?

Q. No, no. Where were you living when these  
602 papers were served on you about this suit?

A. Oh; at 118 Bryant Street.

Q. Are you sure of that? When did you move into 118 Bryant Street?

A. I moved in there the 12th of August.

Q. 12th of August?

A. Yes, sir.

Q. And if I should tell you that these papers, according to them, (indicating), show that you were served with a copy of this complaint on July 30th, then you would surely know that you were not living on Bryant Street, in the Bryant Street house when you were served with the complaint. Were you not living at 50 Florida Avenue, as a matter of fact?

A. Where was I living?

Q. Yes; when these papers were served on you, papers like this (indicating)?

Mr. Houston: When you first got the papers to come to court.

By Mr. Gilligan:

Q. Like that (indicating, paper to witness).

A. I was living at 118 Bryant Street.

Q. You weren't living at 118 Bryant Street on July 30, were you?

A. No, I moved there the 12th of August.

603 Q. So that you are mistaken on where they served them on you, if they were served on July 30th? Where were you living on July 30th?

A. No. 50 Florida Avenue.

604 Mr. Gilligan: That is sufficient I think, if your Honor please. I don't imagine, though, to tell the truth, he thinks differently, but he is just simply mistaken about it. Unquestionably he was not living at 118 Bryant Street.

By Mr. Gilligan:

Q. You say that this man you went to see was at Slaughter & Company?

A. Which one?

Q. The one that took you down on Bryant Street to show you that?

A. Oh, yes; he is a real estate agent.

605 Q. What was his name?

A. Mr. Heeny.

Q. Heeny?

A. He has a deformed hand.

Q. When he took you down to 118 and asked to let you look at the house, and they refused, what reason did they give for not letting you in—118?

Q. A. We didn't go there. We went to 152, or somewhere there.

Q. What reason did they give?

A. Didn't give any reason, they wasn't going to show it until she moved out.

Q. Don't you remember testifying a moment ago that they wouldn't let you in?

A. No; I said wasn't anybody at home.

Q. That is, and you went next floor and looked at that?

A. With Mr. Heeny.

Q. Did Mr. Heeny say anything at all to you about negroes not being able to occupy those houses?

A. Mr. Heeny?

Q. The man you said took you down.

A. Oh, yes—no, he didn't.

Q. And you didn't know anything at all about the fact that negroes are not supposed to buy those houses  
606 or occupy them until—when?

A. Until I got a notice to appear in court here.

Q. With Mr. Urciolo?

A. Mr. Houston.

Q. And did he go down to court with you?

The Court: I thought he said until he got notice to appear in this court.

Mr. Gilligan: I thought it was in the Municipal Court.

The Witness: This court.

The Court: In this trial; in this court?

The Witness: In this trial.

By Mr. Gilligan:

Q. Didn't you also say you went to Municipal Court?

A. I went to the other court when they was having me in court to try to make me vacate No. 50 Florida Avenue, but he wasn't involved in the case.

Q. He wasn't?

A. No.

Q. Did you have to get an order to get into No. 118?

A. From Mr. Heeny?

Q. Slaughter & Company?

A. Yes, sir.

Q. Is he a lawyer, too?

A. No, sir.

Q. Mr. Urciolo didn't go with you?

607 A. No, I never seen him until I went to the office to get the title.

Mr. Gilligan: I don't believe I have any other questions.

Mr. Gilligan: If Your Honor please, there is a gentleman here from the Traffic Bureau, and I would like to put him on just for a minute.

Thereupon THOMAS E. WEST was called as a witness by and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gilligan:

Q. State your full name, please.

A. Thomas E. West.

Q. What is your position, Mr. West?

A. I am examiner for drivers' permits for the Department of Vehicles and Traffic.

Q. And do you have access to the various applications for permits?

A. Yes, sir.

608 Q. For driving licenses?

A. Yes, sir.

Q. You were subpoenaed to come here?

A. Yes, sir.

Q. Did you bring with you the application of James M. Hurd, for a driver's permit in the District of Columbia?

A. Yes, sir.

Q. May I see it?

A. Yes, sir (handing document to counsel).

Q. Is this it (holding up document)?

A. Yes, sir, that is a renewal.

Q. A renewal?

A. Yes, sir.

Mr. Gilligan: I would like to have this in the record as Plaintiffs Exhibit. Would you leave it with us?

The Witness: No, sir.

Mr. Gilligan: Could I have it in the record, or let it be marked and then let him have it whenever he wants it?

The Court: Yes.

(The Hurd application for license referred to was marked Plaintiffs' Exhibit No. 13 and received in evidence.)

By Mr. Gilligan:

Q. Mr. West, this card has a certain language on it. Who filled that card out?

609 Mr. Urciolo: If he knows

By Mr. Gilligan:

Q. If you know.

A. Well, on a renewal card, it requires the signature of the person obtaining the permit for renewal. On the renewal, there is no sworn affidavit on it.

Q. No sworn affidavit, but you would say that this "James M. Hurd" must have been written by him?

A. Yes, sir.

Q. Otherwise he could not have gotten his permit?

A. Yes, sir.

The Court: I think you had better put the substance of it in the record.

Mr. Gilligan: I would like to, if Your Honor please.

The number is 218454, Expiration Date: August 25, 1943, and then a later expiration date, August 25, 1946.

Date of Birth—8/18/91. Age: 52. Occupation: Welder. Race; Negro, definitely marked by an "x", underscored.

Sex: Male, underscored. Weight: 152. Height: 5 feet 11-1/2. Color of hair: Black. Color of eyes: Black.

I think the rest of the information there is not essential in this case, except to show that he lives at 116 Bryant Street, Northwest. The date seems to be June 1st, 1944, and it is signed "Signature of Applicant: James M. Hurd, residence 507 New Jersey Avenue, Northwest." The 116 Bryant Street, Northwest, is here in lead pencil as 610 June 1st, '44.

By Mr. Gilligan:

Q. I presume that means that he changed his residence after the application had been filed?

A. Yes, sir.

Mr. Gilligan: That is all.

Cross-examination.

By Mr. Houston:

Q. Mr. West, how many different indications of race and nationality, or anything, appear on that blank in the printed form?

A. Well, it only shows the one race here.

Q. You mean the printed form itself makes provision for how many?

A. I mean the application for renewal.

Q. The application form.

A. It says—you mean the race and sex—is that what you mean?

Q. Race,—how many races?

A. It has "White" and "Negro."

Q. White and negro?

A. Yes, sir.

Q. There is no provision in there for Indians, is there?

A. No, sir.

Q. Or Chinese?

611 A. No, sir.

Q. Or Japanese or East Indian or anything like that—either white or negro?

A. That is right.

Q. And your rules are that they must check one of those blanks; isn't that true?

A. Yes, sir.

Mr. Houston: That is all.

Cross-examination.

By Mr. Urciolo:

Q. What did you tell them to check, Mr. West, if they are Chinamen?

A. We have them put down "Yellow Race"; write it in ink.

Q. Right where it says "Race," scratch both these out and put "Yellow" down. What do you do if he is an East Indian or an American Indian?

A. They put down "Indian."

Q. Now, how would an applicant know, Mr. West, unless he came to you for some assistance, for instruction?

A. Well, as a rule, where an applicant comes in, and they fill out these applications they see there are only two markings on there and they say "I am an Indian" or "I am Chinese," whatever it might be, and "What shall I do?"

We tell them to put in this column, right before 612 that, put their color in and check out those two.

Q. I don't understand.

A. We cross out those two, and they put their race right above that, on the top part.

Q. Do you pay very strict attention to that, the office in general pay very strict attention—do you have any classification for example as to whether they are Chinese or Japanese?

A. No, sir.

Q. None at all?

A. No, sir.

Q. In other words, the form is immaterial?

A. Well, it is the only form we have ever had.

Q. It is a question of identification?

A. Identification—that is right.

Q. Has that question ever come up in your office, to your knowledge, Mr. West, as to whether these forms should not be revised so as to state, or provide space for several of the five recognized races?

A. It hasn't come up in our office, from the Director of Traffic's Office; but it has come from the public several times and I have made a report on it.

Q. Give us roughly the gist of that report.

A. I only gave it verbally to my chief. It was a case where there—do you want me to cite the case?

613 Q. Please.

Mr. Urciolo: If Your Honor has no objection.

Mr. Gilligan: I have no objection, if Your Honor please. It is one of the things we would like to clear up, if you are satisfied.

The Witness: This is a case where there was a Filipino boy came in, I don't know—it has been five or six years ago—and he took it to fill out his application and checked—he didn't know what to check on it, so then he asked me; so I felt I must say that he was of a brown race, and I said, "You will have to write it in there," so he said, "It looks like you would have a space for me to check my race in," so I said, "I will make a note and ask them." So I spoke to the Section Chief and he said that he would report it, and that they would have a card made for different races, but they never did it.

By Mr. Houston:

Q. But they never did do so?

A. No.

Q. You have had experience that there are colored people who are not negroes but still don't want to check themselves as whites, have you not?

A. I don't know.

Q. You just mentioned this Filipino.

A. Yes.

614 Q. They would have no instructions—there are no instructions on the card, and if you are neither white nor negro, there are no instructions that you write in whatever race you are, are there?

A. No.

Q. Is there any such instruction?

A. No, it is left up to us to tell them.

Q. If a person doesn't come in personally to the office, in other word, sends in a card by mail, they get no instructions?

A. That is right.

Q. And there are no instructions on the card?

A. That is right.

Mr. Gilligan: Are these cards sometimes sent in, in the mail?

The Witness: Yes; this is a renewal.

By Mr. Houston:

Q. That was mailed?

A. Yes.

Mr. Gilligan: Do you have the original, he signed?

The Witness: No, sir, we don't have the original; we only keep them for three wears.

Mr. Gilligan: That is all.

Mr. Houston: It will be noted of record that this exhibit showed—

Mr. Gilligan: Does it show that it was mailed in?

615 The Witness: Yes, sir, it has got a stamp a postage stamp.

The Court: He has testified that it was.

Mr. Houston: Bearing upon it cancellation date of August 17, 1943.

Mr. Gilligan: "Renewal—1946."

Mr. Houston: The permit is good for three years; that is an expiration date, '46.

Mr. Gilligan: But the old expiration date was '43 and the new one is '46; that is the other way. It expires in '46.

Thereupon, JAMES J. GORMAN, was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Urciolo:

Q. Will you state your full name?

616 A. James J. Gorman.

Q. Where do you work, Mr. Gorman?

A. Home Title Insurance Company, in the District of Columbia.

Q. How long have you worked there?

A. A period of about five years.

Q. In what capacity?

A. As general title man.

Mr. Urciolo: Your Honor, I think it would be easier if I handed him this map; if we put it on top of the desk, if we may, Your Honor. I think we can do better.

(Counsel approached the bench, where the following took place:)

By Mr. Urciolo:

Q. Mr. Gorman, are you acquainted with the neighborhood of First Street west from Rhode Island Avenue to Bryant Street?

A. I am.

Q. Now, will you please tell the Court, Mr. Gorman—

Mr. Gilligan: Is it Grogan or Gorman?

The Witness: Gorman.

By Mr. Urciolo:

Q. Please tell the Court the denomination of the section of First Street, from Rhode Island Avenue north, or North Capitol, from Rhode Island Avenue north to Chan-  
617 ning, and from North Capitol to First Street, including First Street—what that section generally denominated as?

A. On the land records that is generally denominated as "Dobbins Addition to the City of Washington"—the various blocks and squares thereof.

Q. It includes First Street?

A. It includes First Street.

Q. And all east thereof?

A. That is right.

Q. What is the territory directly west thereof denominated as?

A. That is denominated, on the land records, as "Addition to Le Droit Park."

Q. Now, Mr. Gorman, will you please state on which properties west of First Street—you have found restrictive covenants?

Mr. Gilligan: If you know, Mr. Urciolo.

Mr. Urciolo: If you know.

The Witness: I will have to say in that respect, Mr.

Urciolo, that in the examination I made of the property up there for you, for the purposes here today, I did not examine for covenants, so that—

By Mr. Urciolo:

Q. (Interposing:) Tell us only what you have examined.

A. I have examined that property up there many  
618 times and I know that it is all generally covenanted,  
but I can't state to you, today, which lots.

Q. Now, by streets?

A. Or where.

Q. I would like to know by streets; does Adams Street have covenants on it?

A. It does.

Q. Does W Street have covenants on it?

A. I would like to say—I can say generally that I believe it does.

The Court: Let's not go that way.

The Witness: I had rather not.

The Court: If you are not sure, say you don't know.

By Mr. Urciolo:

Q. If you know, answer; if not, say you do not. Does Bryant Street have covenants on it?

A. It does.

(At this point, counsel left the bench and the following took place with counsel back at counsel table and witness in witness chair.)

By Mr. Urciolo:

Q. Now, do you know—state only if you know—from houses 114 to 152 Bryant Street: Do they have covenants?

Mr. Gilligan: If Your Honor please, once before in making an effort to have a witness testify to this,  
619 who had known very definitely about it, we were not allowed to have him testify.

Mr. Urciolo: I don't think Mr. Murphy was a title man.

Mr. Gilligan: He was not, but he was thoroughly familiar with the whole neighborhood and the subject, and so stated, and finally we agreed that if there was to be this type of testimony it was to be from the documents, and therefore I must object to this.

The Court: Sustained. The records are the best evidence.

By Mr. Urciolo:

Q. Well, Mr. Gorman, will you please tell the Court, if you have the records, what transactions have occurred in the changes of title in the 100 block of Bryant Street, in the last five years?

A. May I refer to my notes (examining papers)?

I examined that property for activity in the past five years, and can say that beginning on the west end of the Street, which is 116 Bryant Street—and that is Lot 114 in Square 13125—

Mr. Gilligan: I think you mean the east end.

The Witness: That is right; it is the east end. I am sorry.

(Continuing): —that Francis X. Ryan and his wife Mary Ryan are the present owners of that property and they acquired it by deed dated May 3rd, and recorded 620 May 9, 1944, from a Frederick Richmond and his wife, Pearl; they acquired the property May 2nd, 1944, by deed recorded May 4, 1944, from Raymond V. Marceron and his wife, Catherine A., and they acquired the property from the Rooney family, Julia M. Rooney, specifically, by deed dated June 15 and recorded June 16, 1942. That is all of the activity in the last 5 years as far as the title there is concerned.

118 Bryant Street, Lot 113, same square, under the present ownership of Robert H. Rowe, and wife, Isabella J., they having acquired the property by deed dated March 10, and recorded March 21, 1945, from Raphael G. Urciolo and wife, Florence. They acquired the property from a Ruth Price, by deed dated January 17, 1944 and recorded January 27 of this year. Ruth Price—pardon me, that is Rice, Ruth Rice acquired the property from Nelson B. Holmes, by deed dated November 16, recorded the 20th, 1942, and Nelson B. Holmes acquired it from the Drury Realty Corporation by deed dated January 23, and recorded February 4, 1941. Drury Realty Corporation acquired it from Arms & Drury, Inc., by deed dated December 30, 1939, and recorded January 11, 1940. That is all of the transfer activity upon that property in the last five years.

120 Bryant Street, Lot 112 is in the present ownership of Benjamin J. Wrightsman, who acquired it by deed dated March 4, and recorded March 6, 1945, from Philip G.

Wrightsman, sole heir of his mother who died intestate, February 22, 1945. That is all of the transfer activities there, within the past five years.

122 Bryant Street, which is Lot 111, present ownership: Francis M. Lanigan. He acquired that property back in 1905. There hasn't been any activity in the past five years on that.

124 Bryant Street—

By Mr. Urciolo:

Q. Excuse me, Mr. Gorman?

A. Yes.

Q. Did you check whether there had been any wills or administration proceedings on that property?

A. Yes, I did.

Q. 122, I am speaking of; 122 Bryant.

A. No, I didn't check the wills and administration. Francis M. Lanigan is now decedent, if he is—

Q. (Interposing: That is all.

A. That would show up in other records, of course. I was just looking for other activity within the square.

124 Bryant Street, which is Lot 110, is in the present ownership of Constatino and Mary Marchegiani, and they have been in ownership of that property for sometime. I ran it way past the five-year period, but I didn't get the deed through which they acquired it, but there hasn't been any activity within the last five years.

126 Bryant Street, which is Lot 109, in the present ownership of Florence E. Urciolo, who acquired it by deed dated July 14 and recorded July 27, 1944, from Catherine D. Leonard. There wasn't any further activity for the past five years on that.

128 Bryant Street, Lot 108, in the present ownership of Pasquale De Rita and his wife, Victoria. They acquired it by deed dated December 13, 1940 and recorded January 2nd, 1941, from Morris P. Kelly and his wife, Natalie. No other activity there.

130 Bryant Street, which is Lot 107, and taxed as Lot 808, presently owned by Balduino Giancola and his wife, Margaret, who obtained it by deed dated August 27, recorded September 2nd, 1936, from Alice Weber.

132 Bryant Street, Lot 145, presently owned by Helen Augusta Skinner and Melville Gibbs Skinner, who acquired the property as heirs of their father, Aaron Skinner, he obtaining the property back in 1909. No activity on that in the last five years.

134 Bryant Street, Lot 144 in the present ownership of Hubert B. Savage, and his wife Georgia N. They acquired that lot by deed from Florence E. Urciolo dated March 15, recorded March 30, 1945. Florence E. Urciolo acquired it by deed dated December 16 and recorded December 18, 1942, from Henrietta W. Weitz. She acquired the property by deed dated December 9, recorded the 18th, 1942, from 623 Albert J. McKurby and his wife, Eva M.

136 Bryant Street, which is Lot 143 is in the present ownership of Frederic E. Hodge and wife, Lena A. M., and they also have owned that property for some time, way beyond the five-year period you asked for.

138 Bryant Street, which is Lot 142, presently owned by Dominica Garzoni, who acquired it by deed dated February 2nd and recorded February 4, 1943, from Albert B. and Mary B. Easter.

140 Bryant Street, Lot 141, is owned by Helen E. Pyles, who acquired it in 1926 by deed from Aileen A. Callahan.

142 Bryant Street, which is Lot 140, under the present ownership of James M. O'Brien and his wife Catherine B., and they took title by deed dated September 18 and recorded October 20, 1942, from Lewis M. Gardner, Caroline Burgess and Jacob Beihmeyer, being the sole heirs at law of Anna G. Watzell. Anna Watzell acquired it by deed dated November 10, recorded 17 November, 1941, from Morris Bildman and his wife, Rose S. Bildman. The Bildmans took title by deed dated October 23, recorded November 19, 1941, from Bertha Shafer; Bertha A. Shafer acquired it from Nick Basaliko and William Calomaris by deed dated October 17, 1940 and recorded November 19, 1940, which was a defective deed and corrected by later recording on November 17, 1941. Basaliko and Calomaris acquired it from Andrew and B. P. Fisher and Henry Sterman, Trustees, who deeded it to them in a default sale under a former deed of trust way 624 back beyond this five-year period.

144 Bryant Street is in the present ownership of Florence E. Urciolo, she having acquired it from Henrietta Weitz by deed dated October 14 and recorded October 15, 1943. Henrietta Weitz acquired it from Mary L. Markell by

deed dated September 29 and recorded October 14, 1943. No further activities there in the five-year period last past.

146 Bryant Street, which is Lot 138, presently owned by Hosea D. Purdue and his wife, Irma L. They acquired it from Cafritz Construction Company by deed dated November 30, and recorded December 6, 1943.

148 Bryant Street, Lot 137, presently owned by John J. Luskey and wife, Mary E., and they took title from Lena Murray Hodge, deed dated March 8, and recorded March 9, 1945.

Well, Hodge was a straw party, she acquired it from John J. Luskey who held title in himself for the purpose of this deed which was obviously to put himself in as tenant by the entirety. There wasn't any further activity in that property for the past five years.

150 Bryant Street, which is Lot 136, is in the present ownership of Pauline B. Stewart. She acquired it from Florence Urciolo by deed dated March 9 and recorded March 21, 1945. Urciolo acquired it from Remo Pizza and his wife Carolina, by deed dated April 3 and recorded the 13th, 1944.

152 Bryant Street, which is Lot 135, is in the present ownership of Florence E. Urciolo, she having acquired it from Ethel V. Fielder, and under deed dated June 10 and recorded July 1st, '43. Fielder took from Hugh A. Thrift and his wife, Mary, by deed dated June 7 and recorded July 1st, 1943. Hugh A. Thrift took title by deed dated April 27 and recorded April 29, 1943, from Betty B. Spencer. Spencer took before that on a deed from Hugh A. Thrift dated March 27 and recorded March 31, 1943. Hugh A. Thrift took from Jacob S. Gruver and his wife, Annie R., by deed dated December 15, and recorded December 28, 1942. Jacob S. Gruver took from Russell H. Pryor, by deed dated October 2nd, 1936, and recorded December 22, 1942.

And, that is all of the lots I examined, Mr. Urciolo, at your request.

Q. Could you tell me who is the present owner of 114 Bryant Street?

A. I didn't examine that one.

Mr. Urciolo: That, Your Honor, is our record for the stability of the 100 block of Bryant Street.

Your witness.

## Cross-examination.

By Mr. Houston:

Q. Mr. Gorman, as a title man, you would recognize the names of persons who are known to title men as speculators. Do you not see some of those names appearing, as  
626 you run through the list of transfers that you have just indicated?

A. Well, I recognized names that do quite a bit of traffic in real estate. I would not like to call them speculators.

Q. I mean, where you have a lot of transfers going through. Will you go back over there and tell me whether you recognize any such names, go back to 116 Bryant.

A. 116 Bryant?

Q. Yes. I am going right straight back through for this purpose.

A. (Examining file:) No, they are just individuals to me, not familiar.

Q. All right, what about 118?

A. Arms & Drury, Incorporated.

Q. What about Nelson Holmes—the Drury Realty Corporation?

A. Yes.

Q. All right. Lot 120,—I mean premises 120.

A. Premises 120, no there wasn't anything there during the last five years.

Q. All right; now 122 was held since 1905. How about 1924?

A. No, not for the past five years.

Q. 126?

A. Well, the name Urciolo appears. Of course he is a real estate man and he has quite a few transfers.

627 Q. All right; 128?

A. No, they are just individuals.

Q. Who did Urciolo buy from at 126?

A. From Catherine D. Leonard. She apparently held for some time, and I don't know that she is a speculator or real estate operator.

Q. All right. 128?

A. We didn't have 128, did we?

Q. That was the De Ritas, they have held since December 7, 1940.

A. 128—Oh.

Q. Number 128.

A. That is the one I testified, I think, that came from Kelly to De Rita, and they are not operators.

Q. All right; 130.

Q. Just two individuals,

Q. 132?

A. No.

Q. 134?

A. The name of Florence E. Urciolo, is on there.

Q. All right. What about Weitz?

A. What?

Q. Weitz.

A. I have seen her name appear a number of times in the land records. I don't know whether it has been  
628 enough for me to classify her.

Q. All right. 136, that is Mr. Hodge, nothing there. 138?

A. Nothing there.

Q. 140?

A. Nothing.

Q. 142, and I am particularly calling your attention to Calamaris and Basaliko.

A. I have seen their names often and Bildman, quite often.

Q. 144?

A. Henrietta Weitz appears again, and also Florence E. Urciolo.

Q. Now, 146, Purdue and Cafritz Construction.

A. Cafritz Construction, of course, appears very often.

Q. 148?

A. Nothing appears there.

Q. 150?

A. Florence E. Urciolo.

Q. 152?

A. Florence E. Urciolo; again, and Hugh A. Thrift, and Jacob S. Gruver; that is about all I can recognize there.

Mr. Houston: That is all.

Mr. Gilligan: I have two or three, if Your Honor please.

629 Cross-examination.

By Mr. Gilligan:

Q. Mr. Gorman, you spoke about the subdivision north of Rhode Island Avenue, beginning at First and going to the east?

A. Yes.

Q. What did you call it?

A. Dobbins Addition to the City of Washington. That is, I know it from V, W, Adams, Bryant, possibly Channing.

Q. You spoke about from Rhode Island Avenue. I was wondering if you know below V?

A. A little more to the south would be on Barbers.

Q. There are two additions?

A. Moore and Barbers.

Q. I wanted to be sure.

A. And that is right, Moore and Barbers.

Q. Because you said from Rhode Island Avenue north, the question was asked.

A. As I have just stated, that is to correct that.

Q. As to 116 Bryant Street, you seem entirely to have overlooked the fact that the Ryans conveyed this property to James M. Hurd and his wife. How is that?

A. Premises 116?

Q. Premises 116.

Mr. Houston: Lot 114.

630 By Mr. Gilligan:

Q. That is right.

A. If they had it, I missed the last reference.

Q. Missed it?

A. If they did.

Q. I simply call your attention to the fact that you did overlook it. Mr. Houston is their attorney, here.

When you see the name Raphael G. Urciolo, do you look at him as a speculator?

A. I said in the first instance I don't call them names. I testified to seeing their names on the land records a number of times, I qualified that.

Q. You do see his name or his wife's, a lot of times?

A. Yes, sir.

Q. Sometimes Constantino Urciolo?

A. I think I have seen that, yes, sir.

Q. Don't you look upon him, as a title man; as a speculator?

A. A real estate man.

Q. A speculator?

A. I can't say that.

Q. You don't know that?

A. No, sir, I can't sit on this stand and call anybody a speculator.

Q. I wouldn't want you to say yes, if you didn't know.

631 Mr. Gilligan: That is all.

Thereupon, THOMAS W. PARKS, was called as a witness by and on behalf of the defendants and, having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Parks, state your full name.

A. Thomas W. Parks.

Q. And you are also a lawyer, are you not, and a member of this bar?

A. I am.

Q. And in active practice?

A. That is right.

Q. And how long have you been a member of the bar?

A. Thirteen years.

Q. You also have a real estate business under the trade name of Thomas W. Parks, and Company, have you not?

A. I have.

632 Q. How long have you been engaged in the real estate business, Mr. Parks?

A. Twenty-five years.

Q. In the location of your office—that is where?

A. 207 Florida Avenue, Northwest.

Q. And in your real estate office, how many salesmen do you employ?

A. Twelve.

Q. Now, do you deal both in white and colored property?

A. Mostly colored.

Q. Do you deal also in some white properties?

A. Yes, sir.

Q. Do you sell to colored and white?

A. Yes.

Q. Do you buy from colored and white?

A. Yes.

Q. Do you represent yourself as a broker for both colored and white?

A. Yes.

Q. And do you collect rents for both colored and white?

A. Yes.

Q. Now, Mr. Parks, have you had any experience in handling property in the general areas which are bounded on the west,—on the east, by First Street, on the north by Bryant Street, on the south by Florida Avenue, and on the west by Second or Third Street?

633 A. I have.

Q. Have you operated actively in that area?

A. Yes.

Q. How long have you been operating, in buying and selling houses in that area?

A. Since 1920.

Q. In other words, approximately 25 years?

A. That is right.

Q. Mr. Parks, when you first—on shortly before you first—began to operate, in general, what was the character of the residents of the population—what was the character of the population residing, say, between Florida Avenue and Bryant Street, First Street and Second Street?

Mr. Gilligan: What was the "character"?

By Mr. Houston:

Q. Racial identification.

A. Substantially all white in 1920.

Q. How did the negro population move—in what direction?

A. North.

Q. And by "north" they have moved all the way up to—how far?

A. Up to Bryant Street.

Q. And are they on Bryant Street?

A. They are.

634 Q. Did you happen to sell any property to negroes on Bryant Street?

A. Yes, we did.

Q. Mr. Parks, did any of your relatives live in the 100 block of Adams Street?

A. Still do.

Q. Were your people the first negroes to move in the 100 block of Adams Street?

A. Yes.

Q. Will you state how long ago that has been?

A. That was in 1928.

Q. And who were those relatives?

A. My father and mother.

Q. And the house—

A. 150 Adams Street.

Q. All right. Mr. Parks, as of this date, October 15, 1945, is there any fairly clear dividing line between the 635 white and negro population, say between Lincoln Road on the east—you know where that is?

A. Yes.

Q. —and, let us say, Fourth Street on the west, from Florida Avenue to the Filtration Plant; say from Rhode Island Avenue to the Filtration Plant?

A. First Street is considered the dividing line.

Q. The neighborhood east of First Street is considered what?

A. White.

Q. And the neighborhood west of First Street is considered what?

A. Colored.

Q. Do you know of any neighborhood west of First Street that is still considered white?

A. No.

Q. Mr. Parks, on Adams Street, there were a considerable number of cases filed from time to time, over a certain restrictive covenant in the 100 block of Adams Street; were there not?

A. That is right.

Q. How many were there—

Mr. Houston: How many would you say, Mr. Gilligan; about six, would you say?

636 Mr. Gilligan: I would say about six; I don't know whether you are asking me or him.

By Mr. Houston:

Q. Mr. Parks, to your knowledge how many could you remember being filed?

A. About a half dozen.

Q. Did that filing prevent the negroes from moving in?

A. No.

Q. Is there a plentiful supply of houses for negroes in the City of Washington at the present time?

A. There is an acute shortage of housing for negroes.

Q. A shortage that is greater for the whites or the negroes?

A. Greater for the colored.

Q. Under the circumstances, have negroes bought properties even though they knew that lawsuits were pending or threatened on account of covenants?

A. Yes.

Q. Why have they done so?

A. Well, because of the acute shortage.

637 Mr. Houston: All right. In the case of Grady versus Garland, if your Honor please, this is a Court of Appeals case Your Honor may be familiar with,— I don't have the particular citation.

The Court: You are not going to have the witness testify as to that?

Mr. Houston: I am simply going to have him testify as to the property that was covered there, in which they refused relief but which have now gone colored.

Mr. Gilligan: I would let him testify. I will admit the colored without him testifying to that.

Mr. Houston: May I give Your Honor the reason and rationel behind this line?

One is that in the Court of Appeals, *Hundley versus Gorewitz*, it indicated that the covenant must not be permitted to stop the normal growth of the city; in other words, the pressure population, and in this particular area it is my purpose to develop through this witness how the pressure population has grown so that no covenant or lawsuits have been able to stop the trend.

By Mr. Houston:

Q. Are you acquainted with the case of Grady versus Garland in 67 Appeals D. C.?

A. Randolph and—

Q. Yes; has that property gone colored since that time?

A. Yes, the whole block.

638 Q. Is the zero hundred block of S Street now going colored?

A. That is right.

Q. Is the zero hundred block of Randolph Place, just south of the same block of the property mentioned in Grady versus Garland, is that now going colored?

A. It is.

Q. I call your attention to Bishopp versus Broadway and a second case, Bishopp versus Urciolo, et al., both involving cases in the 100 block of Adams Street.

You are familiar with the fact that injunctions were issued in those cases?

A. Yes.

Q. Did that stop the negro population from moving into Adams Street?

A. No, sir.

Q. You are familiar with the fact that—familiar with the fact of covenants being on the north end of houses—that is, the houses at the north end of Flagler Place?

A. Yes, sir.

Q. Flagler Street?

A. Flagler Place.

Q. Did that stop negroes from moving in and taking over those very houses?

A. No.

639 Q. You are familiar with the case of Buckley versus Corrigan, are you not?

A. T Street.

Q. No.

A. S Street, between Seventeenth and Eighteenth.

Q. Yes. An injunction was issued in that case, was it not?

A. That is right.

Q. Do negroes occupy the houses covered by that very injunction, now?

A. Yes, the whole block is now colored.

Q. You are acquainted with the case of Hundley versus Gorewitz, are you not?

A. Yes.

Q. Did the covenant stop the negroes from buying into that block, the 2500 block of Thirteenth Street, Northwest?

A. No.

Q. And are they still there?

A. Yes.

Q. Now, if the negro population—is the negro population striding or spreading still farther northward up over Park Place and Warder Street?

A. Yes.

Q. And Keefer Place?

A. Yes.

640 Q. Were there covenants on those houses?

A. Yes.

Mr. Gilligan: Are you sure? If he doesn't know, if Your Honor please, I hope he won't say yes, if he doesn't know.

The Witness: In some of the blocks there were covenants, and not in all of them.

By Mr. Houston:

Q. State which ones.

Mr. Gilligan: I am not objecting, because it is bringing it to a head. Let him go on.

By Mr. Houston:

Q. All right. Let's take Park Place—

A. Yes.

Q. In that case—

Mr. Houston: If Your Honor please, they get Park Road and Park Place mixed up. Park Place runs along the fence around Soldiers Home. Your Honor knows where it is. It goes north.

By Mr. Houston:

Q. Were there any covenants on Park Place?

~~A. Yes, sir, covenants north of Irving Street on Park Place.~~

Q. Well, have negroes swept on past that and taken those houses with covenants?

641 A. Yes, all the way up to Park Road, now.

Q. Now, the streets west of—Can you mention any streets west of Park Place, either—well, let's take the streets running east and west.

A. Well, there were covenants in Columbia Road, Irving and Park Road, streets running east and west.

Q. All right, now—

A. (Continuing) And Warder Street, north of Kenyon—north of Lamont.

Q. Let's take the streets you mentioned running east and west.

A. All-right.

Q. Have negroes taken those houses in spite of the covenants?

A. Yes, sir.

Q. Let's take Warder Street. How far up are negroes now, on Warder Street?

A. Let's see, now—they are up to Newton Street.

Q. How do you explain the fact that negroes have taken those blocks in spite of the objection against them and the presence of covenants?

A. Well, I should think that the white residents, as the colored people get near, desire to move and they frequently get together and decide not to—I mean, decide, rather, to disregard the covenant.

642 Q. Is it also a fact that the negroes pay such high prices?

A. That is an inducement, of course.

Q. As an inducement to whites not to file suit?

A. Yes, and another situation is that the negroes get within a block or two of a strictly white area, and a number of white people move out and rent the properties.

Q. Isn't it true—

A. (Continuing) And then, the other residents who did not rent fear that the neighborhood is not as good as it was, in view of the fact that tenants have infiltrated.

Q. Is it true that negroes never get into a neighborhood, say a white neighborhood, until the neighborhood itself has changed from a home-owning neighborhood to partial tenancy, at any rate?

A. That is true.

Q. And the change in neighborhood—does the change in neighborhood precede the movement of negroes?

A. No, the change generally—I don't think I understand your question.

Q. Well, I am trying to find out as to whether the change in the character of neighborhoods precede, in other words, the change from a home-owners' neighborhood, and it becomes something else prior to the negroes coming in.

A. That is right; yes. It becomes a semi-tenant  
643 neighborhood.

Q. So that the change in neighborhood precedes  
and does not follow the negroes coming in?

A. That is right.

653 Q. Mr. Parks, at the time that these neighborhoods  
began to change, is it usual for speculators to begin  
operating?

Mr. Gilligan: Just a minute, if Your Honor please.

What neighborhood is he talking about, if Your Honor  
please? He said "at the time these neighborhoods began to  
change." What is he talking about? I would like  
654 to get it more definitely.

Mr. Houston: We have been talking about, to go  
back to yesterday, you will remember we talked about the  
100 block—the 1700 block of S Street, Corrigan versus Buck-  
ley; we talked about the 1700 block of First Street and the  
zero hundred block of S Street, which is Grady versus Gar-  
land; we talked about the 100 block of Adams Street, which  
is Bishopp versus Urciolo and Bishopp versus Broadway;  
we talked about Luray Place, Park Place and Warder  
Street.

By Mr. Houston:

Q. Now, in those neighborhoods at the time the colored  
began getting in, has it been that there immediately be-  
came—or should I say, began, great activity on the part  
of real estate speculators on those areas?

A. Yes, they generally buy the rented properties first.

Q. And it is usually the rented properties that the owners  
no longer care about holding onto?

A. That is right.

Q. Those are sold first and the negroes get the rented  
properties first?

A. Yes, sir.

Q. Now, do the negroes have to pay more than the value  
of the properties—market value of the properties, as they  
stood in the hands of the white owners?

A. Yes.

655 Q. Do they have to pay more than what would be  
the addition by way of renovation and commissions,  
added to the purchase price paid the white owners?

A. Yes.

Q. So, what is then the effect of negroes buying into these changing neighborhoods, as far as depreciation of property values are concerned? Is it lower, or what?

A. You mean the prices paid?

Q. Yes, sir.

A. The prices are higher.

Q. And does it afford a new market for those properties in the sense—does it afford a new group of purchasers for those properties when the negroes come in and buy?

A. Yes.

Mr. Houston: Your witness.

Cross-examination.

By Mr. Urciolo:

Q. Mr. Parks, what is the reason for the higher price? Is it because the speculators have to make a profit also?

A. Yes, the speculators do not operate without profit.

Q. And what other reason?

A. The essential reason is the lack of supply.

Q. What do you mean by that?

A. The demand is much greater than the supply of houses.

656 Q. Well, does that apply to all the houses—white and colored?

A. Yes, but the supply of houses for colored is, I think, smaller.

Q. How much smaller?

A. Oh, considerable.

Q. Mr. Park, do you have any white persons in your real estate office learning the real estate business?

A. Yes.

Q. You have spoken, Mr. Parks, of the cases of Grady versus Garland, Buckley versus Corrigan, Bishopp versus Chamberlain, and others in which injunctions issued—

Mr. Gilligan: Just a moment, if Your Honor please. If he did, I didn't hear it.

The Court: I think it is Corrigan versus Buckley.

Mr. Urciolo: I said Buckley versus Corrigan.

By Mr. Urciolo:

Q. You spoke of those yesterday?

A. I think counsel asked me yesterday if I knew of the injunctions and my answer was yes.

Q. And my question is that I think you testified that in all those cases negroes are today occupying all those areas?

A. That is right.

657 Q. Has a suit ever been filed to quiet title by formally declaring those titles void?

A. Not to my knowledge.

Q. Now, Mr. Parks, have you had experience in changing neighborhoods, buying and selling in neighborhoods that are changing?

A. Yes.

Q. Any one in particular?

A. Well, several neighborhoods. In other words, we operate as a rule by blocks.

Q. Now, will you please take on block where you have had six or more houses and state, roughly, if you cannot exactly, the per cent of increase in price that either the white or the colored had to pay. Take Adams, for example. Did you have more than six houses in there, for sale?

A. Yes.

Q. How many did you have?

A. Oh, I suppose about fifteen.

Q. Now, to the best of your ability, what percentage of higher price was paid by either the whites or the colored?

A. I should say that the prices ran about 15 to 20  
658 per cent higher for colored.

Q. I have one more question, Mr. Parks.

Have you ever heard of the Lily Pons Project?

A. Yes, that is out northeast on Kenilworth Avenue.

Q. Is that a government project?

A. It is.

Q. Do you know of your own personal knowledge whether a committee was sent there to investigate the number of vacancies?

A. About a year ago, some of the members of our association visited there and found out that there were a large number of vacancies, and the matter was taken up with the official of the War Housing, with a view of trying to per-

suade them to furnish—or to turn that project over to colored, in view of the fact that at that particular time there was no War Housing available to colored.

Q. Was the colored allowed occupancy?

A. No, the answer was that the neighborhood was substantially white and in view of that fact it wouldn't be advisable to turn it over to colored.

Mr. Urciolo: Nothing further.

### Cross-examination.

By Mr. Gilligan:

Q. One other question. That development was not under deed covenant or restrictive agreement, was it, either?

659 A. I don't think so.

Q. Mr. Parks, you made a statement yesterday that you had sold a house on Bryant Street in the 100 block. Will you tell the Court what number it was?

A. Well, we sold about ten in there, beginning back in 1926, but all of the houses we sold, with the exception of one, were not covered by covenants. The one house which was covered by a covenant, 144, we sold to a white person.

Q. So that you have never sold any of the 20 houses on Bryant Street, beginning at the alley near First Street and running from the covenanted houses, to colored?

A. No.

Q. You don't do that business?

A. No.

Q. You observe the covenant, as far as you can, in connection with your business?

A. That is right.

Q. Going back to Adams Street, you sold the first house to colored—to your father. Where was that?

A. 150.

660 Q. Was there a deed covenant or a restrictive deed?

A. No.

Q. You made the statement that you had sold fifteen houses to colored, on Adams?

A. Yes..

Q. Any place on Adams Street under deed covenant—you didn't attempt to sell?

A. That is right.

Q. And that is the practice of your office?

A. Yes; except sometimes we examine the title and if we feel that the covenant is not valid, then we sell. If we feel—some of them are, if you recall. We had that up in Irving Street in white properties owned by two joint tenants and only one of the joint tenants signed the covenant and we felt in that case that the covenant was not valid and we proceeded to sell.

Q. In other words, if you thought there was a deficiency and there had been sufficient sales demand for justifying your not observing the covenant, you would do it?

A. That is right.

Q. But not otherwise?

A. No.

Q. You had a man with you, I think—one of your salesmen—by the name of Wills?

A. That is right.

661 Q. Is he still with you?

A. No.

Q. How long ago did he leave?

A. Two years ago.

Q. A colored man?

A. That is right.

Q. No question about that?

A. No.

Q. He don't know whether he was or not, that is the reason I asked you that.

One other question: You are familiar with the case of Corrigan versus Buckley, you stated?

A. Yes.

Q. I think that was the first case on the restrictive agreement that went all the way to the Supreme Court.

A. That is right.

Q. What did that arise from?

A. You mean—

Q. What block?

A. The 1700 Block of S, north side.

Q. North side of it?

A. Yes.

Q. Were not all the houses in the 1700 block of S Street under this same restrictive agreement?

A. I don't think so.

662 Mr. Houston: I don't think so, for that matter.

Mr. Gilligan: If you can tell me in that matter, how many were, and how many were not.

Mr. Houston: I don't recall as to just exactly the numbers, but I can say that John Lewis Smith and James Easby Smith lived in that block and I think that James Easby Smith was the leading counsel in that series of cases. There was to my knowledge a very lovely house at 1705, I think, S Street, occupied by Fox, I think, who is a white real estate man and so far as I know his family still occupies it after 23 years. There was, opposite him, a house of J. Arthur Froe, on the corner of the alley. Mr. Froe was a negro and was recorder of deeds for the District of Columbia back under the Republicans in the 20's. That house was not under covenant. The rest of the houses on the south side of the block, as far as I know, were under covenant.

On the north side of the street, in addition to the Fox house, which was not under covenant, 1735 was not under covenant, which was occupied by Dr. Norman W. Harris; 1739 was not under covenant, I think, and was in the name of Bishop E. P. Jones of the Episcopal Zion Church, and then at about 1745, there was a row of very small houses which had been in the block, oh, I imagine since the Civil War, very old, and they were not under covenant.

Mr. Gilligan: Both sides of the street?

663 Mr. Houston: No, just the one side, the north side, from there up to Eighteenth Street, where there was a Sanitary Grocery Store. I should say that there were approximately six or seven houses.

The way I happen to know is that my father bought one of those houses and was a defendant in a suit brought under that restrictive agreement. George Hayes also bought one of the houses. Augustus W. Brady, another negro member of the bar, bought another one of those houses, and I should like to introduce the fact that those lawyers bought those houses in spite of the fact that there was an agreement on them, in spite of the fact that litigation already had been started in another case. The first case was Corrigan against Buckley, and there was a case against Dr. Scott, and also a case against my father, and three

cases, at least—my father's case, I know, the reason for buying was the pressure of housing. In other words, the point that I was making the other day is, you can't stop it when the population demands become irresistible.

Mr. Gilligan: I have no further questions.

Mr. Urciolo: I have one or two.

Further cross-examination.

By Mr. Urciolo:

Q. Mr. Parks, in answer to Mr. Gilligan's question, you stated that you sold 144 Bryant Street to a white purchaser.

A. That is right.

664 Q. How much did you get from that house, from the white purchaser.

A. We sold that house for, I think,—it was \$4,400.

Q. That house is substantially the same, a two-story brick house, as the other eleven houses that are uncovenanted. How much did you get as an average for the other houses, uncovenanted, in the same block?

A. \$6,750.

Mr. Urciolo: That is all.

Mr. Houston: I have nothing further.

The Witness: I might suggest, Your Honor, that for instance—take the 1700 block of S Street, there are one or two apartment houses. Apartment houses as a general rule do not have covenants so that the apartment houses on S Street, I am satisfied, are not covered by the covenant.

Mr. Houston: I am not so sure as to that.

Mr. Urciolo: I don't think it is material.

The Witness: Investors who own property don't want it covered by restrictive covenants. I have not found an apartment so covered yet.

Mr. Gilligan: At any rate, you are not responsible for the answer that Mr. Houston made.

Mr. Houston: You mean,—you stated about the policy of your office, and in your opinion the neighborhood changing,—you would sell under such circumstances?

665 The Witness: Oh, yes; surely.

Mr. Houston: For example, at Fifteenth and Irving, Northeast, you sold a house to Haywood, did you not?

The Witness: That is right.

By Mr. Houston:

Q. On the theory that the neighborhood was changing?

A. That is right.

Q. So it isn't the existence of the covenant itself; it is the question as to whether you believe there is substantial protection for your purchasers; isn't that the guiding test?

A. That is the test.

Q. So that you wouldn't hesitate to sell, even though there was a covenant, if you thought that your purchaser had a substantial chance of keeping the house?

A. That is right.

Q. Mr. Gilligan: You have not sold any houses in the 100 block of Bryant, from the alley down to 152, which are under deed covenant?

The Witness: No.

Mr. Gilligan: That is all.

Mr. Urciolo: If you were not aware of this case, would you consider that neighborhood colored or white?

The Witness: I would consider Bryant Street as colored. We have also considered First Street as the boundary line; back since about 1925 half the block has been colored.

666 Mr. Gilligan: For many years the lower half of Bryant Street has been fully occupied by colored?

The Witness: That is right.

Mr. Gilligan: And most of the houses occupied.

Thereupon, E. FRANKLIN FRAZIER was called as a witness by and on behalf of the defendants and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Houston:

Q. Mr. Frazier, state your full name, please.

A. E. Franklin Frazier.

Q. And you are located where, sir?

A. At Howard University.

Q. Are you head of a department?

A. Professor of Sociology and head of the Department of Sociology.

- Q. Recently, were you a Fellow at the Library of Congress, by appointment of Dr. MacLeish?
- 667 A. Yes, a resident Fellow.

By Mr. Houston:

- Q. Mr. Frazier, will you state something of your educational qualifications?

A. I received my A. B. from Howard University. I took graduate work in sociology at Clark, Worcester, Massachusetts. I was a Research Fellow, New York School of Social Work, Columbia University. Fellow of the American-Scandinavian Foundation to Denmark. I have been a Fellow of the Guggenheim Foundation to study the negro family in South America and the West Indies. I have been research assistant in the Department of Sociology, University of Chicago, where I received my degree of Doctor of Philosophy.

- Q. And will you state some of your publications?

668 A. I am author of the Negro Family in Chicago, Negro Family in the United States, published by the University of Chicago, author of the Free Negro Family, Fisk University Press; and of Negro Youth at the Crossways, published by the American Council of Education.

- Q. As a matter of fact, under a government program, did you make a survey of Washington?

A. We keep a continuous survey of Washington on, going on at Howard University, but I have made the study for Mayor La Guardia of New York.

By Mr. Houston:

- Q. Will you state, Doctor, if you in your analysis of families and houses, had occasion to consider the question of perpetual covenants against ownership and occupancy by negroes and other minority groups?

A. Yes, I studied that in Chicago, New York and Washington.

- Q. Will you state what the effect of perpetual covenants are, on the natural growth of the city?

Mr. Gilligan: I object to that; I think it is not at all relative.

669 The Court: Sustained.

Mr. Houston: If Your Honor please, I would like to take an exception, on the ground that Hundley versus Gorewitz,—

Mr. Houston: It is in the last three paragraphs of the opinion.

"Furthermore, apart from the market value of property, which, as we have seen, is not the only test, the present appellees are not now enjoying the advantages which the covenant sought to confer. The obvious purpose was to keep the neighborhood white. But the strict enforcement of all five covenants will not alter the fact that the purpose has been essentially defeated by the presence of a Negro family now living in an unrestricted house in the midst of the restricted group, and as well by the ownership by another Negro of a house almost directly across the street. And this is just the beginning.

"The trend is unmistakable, its effect is apparent, and we are brought to conclude that to grant an injunction enforcing the covenant would merely depreciate all the property in the block without accomplishing the purpose which originally impelled its making, while to deny an injunction will leave all of the properties with a  
670 value commensurate to the conditions as they now exist. In these circumstances the equities require that we refuse injunctive relief and leave the parties to such remedies as they may have at law."

Now, I should like to say, what I am doing; I am developing it, coming right down to take the effect of this covenant on Bryant Street.

I would like to call Your Honor's attention also to another paragraph.

"However, it is equally well settled that, since the purpose of such restrictions is the mutual benefit of the burdened properties, when it is shown that the neighborhood in question has so changed in its character and environment and in the uses to which the properties therein may be put that the purpose of the covenant cannot be carried out, or that its enforcement would substantially lessen the

value of the property, or, in short, that injunctive relief would not give a benefit but rather impose a hardship, the rule will not be enforced."

Then, in the next paragraph:

"And it is also applicable where removals are caused by constant penetration into white neighborhoods of colored persons. For in such cases to enforce the restrictions would be to create an unnatural barrier to civic development and thereby to establish a virtually uninhabitable section of the city. Whenever, therefore, it is shown that the purpose of the restriction has been frustrated and that the result of enforcing it is to depreciate rather than to enhance the value of the property concerned, a court of equity ought not to interfere."

Now, I am respectfully putting down the general proposition, and I am going to have him apply it directly to the property on Bryant Street.

Preliminary to that—

By Mr. Houston:

Q. Dr. Frazier, what is your own address— house address?

A. 220 Rhode Island Avenue, Northwest.

Q. Are you thoroughly familiar with the properties from Second and Rhode Island Avenue, north up to the Filtration Plant and over to Howard University?

A. Yes.

Q. How long have you lived in the neighborhood of Second and Rhode Island Avenue, Northwest?

A. Ten years.

Q. So that—

A. (Interposing) This is the beginning of the eleventh year.

Q. How frequently do you go up or down Second Street, and how frequently are you in the neighborhood of Second and Bryant Streets?

672 A. I go up and down four times a day, two going to Howard University, and two coming back.

Q. Dr. Frazier, in your study have you had occasion to examine and consider the effects of perpetual covenants on community growth?

A. Yes—

The Court: Don't answer.

Mr. Gilligan: I object to the question, if Your Honor please.

The Court: Had you finished your question?

Mr. Houston: Yes, sir, I have finished that question.

The Court: Objection is sustained.

By Mr. Houston:

Q. Now, are you familiar, Dr. Frazier, with the character of the racial occupancy of the different houses on Bryant Street?

A. Yes.

Q. In the 100 block of Bryant Street?

A. 100 Block of Bryant Street—yes.

673 The Witness: Yes, I am fairly well acquainted with that, those specific houses. I mean, for instance, what do you want to know? That is, if I can say it.

By Mr. Houston:

Q. I mean that block is occupied by both white and colored.

A. Yes.

Q. Now, has there been—

A. The movement has been over toward the east.

The Court: You have answered the question.

By Mr. Houston:

Q. Now, in which direction has the negro population moved from, say, Second and Rhode Island Avenue, in the last ten years that you have been in the neighborhood?

A. It has moved eastward.

Q. Has it moved also northward?

A. Northeast of it—northeasterly, I would say. It has followed what we call—

The Court: Wait a minute. You have answered the question.

By Mr. Houston:

Q. Has the movement followed any well-established, recognized sociological principles?

Mr. Gilligan: If Your Honor please, I object to the question of sociological principles.

The Court: Sustained.

By Mr. Houston:

Q. Are you able to observe in this movement any pattern which has been more or less uniform, which has been uniformly in existence in other movements, in other cities?

A. Yes.

Q. Will you state what that pattern is?

A. The movement has been along areas that are vulnerable to the incoming negro population, because you have there, for instance, that municipal plant of the water department, and the garbage disposal unit, I think, and as negroes infiltrate into neighborhoods, it is generally along such areas, and another noticeable feature is that the foreign born element is high in that area, and negroes generally sort of infiltrate along such areas.

Q. Does obsolescence play any factor in making the neighborhood vulnerable?

A. Yes, you can note the age of homes. For instance, along that area about fifty per cent of the homes are about 50 years old, or something like that. We discovered in our laboratory at—

675 Q. (Interposing:) And where houses have been residences for 40 years or 50 years—that usually indicates that in that period of time there has been usually a complete change of ownership in the sense that the first owners have either died, moved away, sold, or otherwise disappeared.

A. Yes, that generally happens.

We have what we call "succession," where when an area gets old, we notice that it loses its residential character and one or more racial groups come into the area. Negroes are one group. Quite often Italian or Poles come into these areas where there is deterioration, but you have different classes. Some areas become home-owning areas. Certain

classes of colored persons buy, just as on Rhode Island Avenue. We moved in ten years ago and we displaced the white population but that street is a home-owner's street and most of the people bought homes and there is a decided appreciation of the neighborhood.

Q. Is there such a thing as a residential cycle of home ownership and tenancy and sub-tenancy and complete changeover by the infiltration of another group?

Mr. Gilligan: Is that another way of following the sociological inquiry? I object to it.

Mr. Houston: Of course it is.

The Court: Sustained.

676 By Mr. Houston:

Q. An ordinary instance is, has the homogeneity of the neighborhood been destroyed prior to the infiltration of the negro?

Mr. Gilligan: If Your Honor please, I object to that. If he will keep it to this particular issue before us, I have no objection.

The Court: Objection is sustained.

Mr. Houston: Well, I am introducing this witness as an expert to testify as to the effects of certain phenomena which have already been introduced as facts in the record, and on that basis I should like to ask a hypothetical question, that if within an area of 20 houses you should find at least six or seven of them have been either bought or rented by Italians, and one by an Assyrian, would you say that the homogeneity of that neighborhood, as an American white neighborhood, has already been destroyed?

The Witness: Yes.

By Mr. Houston:

Q. Would you consider the neighborhood in the 100 block of Bryant Street, where out of 31 houses, 11 houses were occupied by negroes, and five houses were occupied—five or more houses were occupied—by Italians and Assyrians, would you consider that a white neighborhood?

A. No.

Mr. Houston: No further questions.  
The Court: Mr. Urciolo.

Cross-examination.

678 By Mr. Urciolo:

Q. Dr. Frazier, assuming that in this 100 block of Bryant Street there are 20 covenanted houses, perpetually against negroes, or persons of negro blood, and 11 houses with no restrictions and completely occupied by colored. Now, in the group of 20 houses restricted perpetually against  
679 negroes, six of these 20 restricted houses are occupied or owned by foreign-born, southern Europeans of the first generation.

Would you then say that the cycle has already changed?

Q. I mean, Dr. Frazier, has the homogeneity of the neighborhood changed?

A. Certainly.

680 Q. Dr. Frazier, to put the question this way—would it be very likely, in a neighborhood where there are 20 covenanted houses and 11 uncovenanted houses, and of the 20 covenanted houses seven or more houses are either occupied, or owned, by foreign-born southern Europeans—is the negro very prone to infiltrate such a neighborhood?

A. Yes.

Mr. Urciolo: That is all.

The Witness: It was vulnerable socially and economically. It has lost its residential character. The covenant excluding the negroes has become unrealistic because of economic factors such as the houses being thrown on the market, older generation has moved out, so negroes and foreign-born can come in, so that the foreign-born and negroes are really behaving each to a similar situation in a city, and not the negro following the foreign-born so much, but both on these groups, because of their economic

681 status, because of their social status, because they are identifiable sometimes because of color and other characteristics, they move into such an area as that.

By Mr. Urciolo:

Q. Is this social factor increased by the fact that the countries wherefrom these immigrants came have no color line?

A. Pardon, I didn't hear you.

Q. Is sociability increased by the fact that the countries, the provinces of these immigrants, the countries providing these immigrants, had no color line?

A. Oh, yes.

Mr. Urciolo: No further questions.

Cross-examination.

By Mr. Gilligan:

Q. Doctor, what does homogeneity mean, as you have been using it?

A. What?

Q. What does homogeneity mean, as you have been using it?

A. When I have used "homogeneity" I have meant that the families inhabiting a certain neighborhood come from a same racial and cultural background and on the whole, we find they represent the same social status.

Q. You don't mean by that that those Italian families—there are three families that are defendants in this case—

682 Mr. Houston (Interposing): Plaintiffs.

By Mr. Gilligan:

Q. (Continuing:) —plaintiffs in this case—you don't mean that they are of the same social status as the colored, who live down at the lower end of the block, do you?

A. Well, social status has reference to one's position in his community and his contacts. Those Italians, most likely go to a Catholic Church and the negroes go to a Protestant Church.

Q. You don't say yes to that, that they are of the same social status.

A. I would have to hear more about those people before I could answer a question like that.

684 By Mr. Gilligan:

Q. You say that in this particular section that you described for Mr. Houston, west of First Street, North of Rhode Island Avenue, that the movement is toward the east. Just what do you mean?

A. I mean that as far as I have been able to observe, and from our statistics on the census tract, there has been an increase in the negro population in those two census tracts and the increase has been greater in the western census tract than the more easterly census tract, which shows a movement toward the northeasterly with Rhode Island Avenue cutting across—

Q. Let me ask you, to see if you know of your own knowledge. Let's forget the census tracts.

Do you know how many negroes live on First Street and to the east of First Street, to Lincoln Road, From Rhode Island Avenue north to the Soldiers Home grounds?

A. No, I can't tell you that.

Mr. Gilligan: I have no other questions.

685 Thereupon, Miss DORIS G. WILKINS was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:—

Direct examination.

By Mr. Urciolo:

Q. Will you please state your full name?

A. Doris G. Wilkins.

Q. What is your work, Miss Wilkins?

A. Social Welfare Consultant in the Landlord & Tenant Court, employed by the Board of Public Welfare.

686 The Witness: And Social Consultant in the Landlord & Tenant Court.

Q. Miss Wilkins, would you explain please what your duties are?

A. My duties are to determine what the difficulties are between landlord and tenant and to work out an adjustment thereto.

Q. Your adjustments are made for persons that are about to be evicted, in general?

A. That is a portion of my work, because the problems in the Landlord & Tenant Court involve other than possession suits, of course. There may be disputes as to the amount of rent due, or complaints about repairs, or any number of problems wherein the landlord and tenant differ, and they also have involved questions of possession when the landlord for one reason or another seeks possession of the property and the tenant is having difficulty in finding another place to live.

Q. Miss Wilkins, you handle both white and colored applicants, do you not?

A. Yes.

687 Q. You work in the Municipal Court and your work is not confined to either white or colored persons in the landlord and tenant relationships, is it?

A. No.

Q. You handle both?

A. That is right.

Q. Now, Miss Wilkins, to the best of your ability, will you please state how long you have been in there?

A. I have been there four years in November.

Q. Now, Miss Wilkins, will you please state whether, if you can, the applicants for assistance are mostly colored or white?

A. A majority of the persons I serve are colored.

Q. How large a majority?

A. About 90 per cent.

Q. I understand that you attempt to procure housing accommodations for your applicants when they are about to be evicted.

Mr. Gilligan: Just a moment. If Your Honor please, don't object to the general idea of her help, and on; but, if he would confine it to the two cases before you, I think it would be entirely all right; but, the general question, I think it is entirely out of order and I object.

By Mr. Urciolo:

Q. Miss Wilkins, do you happen to recall whether any colored applicants have come to you seeking housing accommodations on Bryant Street, Northwest, in the 100 block?

A. I don't recall.

Q. Miss Wilkins, have you found it more difficult in procuring housing accommodations for colored, than for white?

A. No.

Q. You believe, then, that the scarcity is as great for the white as it is for the colored?

A. I believe so.

Q. Did you not state that 90 per cent of your applicants were colored?

A. Yes.

Q. And you still state that—

The Court: You are cross examining your own witness.

Mr. Urciolo: I am sorry; one second, please.

By Mr. Urciolo:

Q. Miss Wilkins, have you ever heard of the Lily Pons Project?

A. Yes.

Q. Have you had an occasion to call there for housing accommodations?

A. No. I cannot actually answer your question as you put it. The Lily Pons Project is administered by the National Housing Authority and my dealings are never directly with any projects. My referrals are to the National Capital Housing, as such; the placements are made from their own headquarters, and I have no control nor do I

make suggestions as to which project applicants are or shall be placed in.

. . . . .

690 Thereupon, RAPHAEL G. URCILO was called as a witness by and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

691 The Court: Is he your witness?  
Mr. Houston: Yes, sir.

Direct examination.

By Mr. Houston:

Q. Mr. Urcilo, I would like to find out from whom you bought the properties on Bryant Street, whether you bought them from the original owners—did you buy the properties on Bryant Street from the persons who were living in the premises at the time you bought them?

A. Well, 118 Bryant Street was bought from Patrick D. Holmes, a real estate operator.

Q. Is Patrick D. Holmes known to the Washington real estate brokers as a speculator?

A. He is.

Q. Did Patrick Holmes live in 118 Bryant Street at the time he sold it to you?

A. He did not.

Q. How about the Stewart house, 150 Bryant Street, 118 Bryant Street, incidentally, is the Rowe house, is it not?

A. That is the Rowe house.

Q. Now, let's take the Stewart house; that is 150.

. . . . .

692 A. I bought that from Remo Pizza, and his wife, Carolina Pizza.

Q. Are they Italians?

A. They are Italians.

Q. Do you know whether they are first or second generation?

A. First generation; through a real estate agent, not directly.

Q. Bought through a real estate agent?

A. Yes, I bought through a real estate agent.

Q. Who was the agent, if you remember?

A. I don't recall. A salesman in my office handled the transaction.

Q. All right. Now, let's take the Savage house, is that 134?

A. Yes.

Q. Whom did you buy that from?

A. I bought that, to the best of my recollection, from Mr. McCurdy, a real estate agent.

Q. Did he live in it?

A. No. It was rented to Mrs. Anna Pettit, as a 693 monthly tenant.

Q. Mrs. who?

A. P-e-t-t-i-t.

Q. Now, let's take the other properties. 126 Bryant Street?

A. I bought that from Mr. Frederic Richmond, an attorney employed by the United States Government.

Q. Did he live in it?

A. No.

Q. Incidentally, is he the same Richmond that sold to Hurd?

A. I don't know that. I am 99 per cent sure that he is.

Mr. Houston: If Your Honor please, Mr. Gilligan and I stipulate that Ryan sold to Hurd, and that Ryan was not residing on the premises, that he was a non-resident, and they don't know where he is.

The Court: All right.

Mr. Houston: That he was a non-resident at the time he sold to Hurd.

The Court: Yes.

By Mr. Houston:

Q. One forty-four Bryant Street?

A. I bought that from Barney O. Weitz, a real estate 694 speculator who had bought from Roland Fowler, who was a real speculator, who had bought through Thomas W. Parks, a real estate agent.

Q. Now, who did Weitz buy from?

A. Weitz bought it from Roland Fowler.

Q. Spell that last name.

A. F-o-w-l-e-r, Fowler.

Q. And Fowler bought from whom?

A. Fowler had purchased through Parks, a real estate agent, and he got it—I don't know from whom.

Q. All right. Did Weitz or Fowler live at 144 Bryant?

A. No.

Q. 152 Bryant Street?

A. I bought that from a real estate agent; I don't recall whom. I know I did not buy it direct, but from Hugh Thrift, who dabbled in real estate.

Q. Is Hugh Thrift living or has he lived on Bryant Street, at 152?

A. The house was vacant.

Q. Do you know whether he had lived at 152 Bryant?

A. All I know is that the previous occupant was a tenant. If he had ever lived there, I don't know.

Q. But at the time the last occupant before you bought—was a tenant?

A. Was a tenant.

. . . . .

695 Q. Do you know whether several real estate operators had been active recently in Randolph Place, where ultimately the particular property has come into the hands of negro ownership?

A. At least a dozen.

Q. Can you name some?

A. Myself, Raphael G. Urciolo; Barney O. Weitz—

Q. How about any negro real estate operators?

Mr. Gilligan: I don't think you should lead him. Let him answer.

The Witness: I have them on the tip of my tongue. The Murray Company.

By Mr. Houston:

Q. Murray Company?

A. R. G. Dunne,—the Park Road Housing Commission.

696 Q. Is it "Housing Commission" or "Housing Company"?

A. Commission.

Henry I. Berman; Mrs. Platsohn. That's enough.

Q. How about any negro real estate firms operating in there on M Street?

A. John W. Rouse—he purchased several.

Q. On the zero hundred block of S Street, Northwest: Has there been any great activity recently by speculators in the zero hundred block of S Street?

A. Well, I know as a fact of only one.

Q. Who is that?

A. Barney O. Weitz.

Q. Do you know whether Ralph has been in the zero hundred block of S Street?

The Witness: I remember now—John W. Rouse  
697 bought at least two, and I am quite certain that Alvin  
Fisher has bought some; and I know that Patrick  
D. Holmes either owns or controls in straw parties, two  
or three.

By Mr. Houston:

Q. Who was the first man you mentioned?

A. Barney O. Weitz.

Q. Take the 100 block of Adams Street. At the time when that changed—certain houses in there, from white to colored. Were there more than one or was there more than one real estate operator operating in the block?

A. There were, in fact, in one house, Patrick D. Holmes and myself sold it to each other about five times.

Q. All right. Well, then, were you there operating?

A. I was.

Q. Was Holmes?

A. He was.

Q. Do you know whether anybody else was operating in that block?

A. Lanigan,—Frederic Richmond.

Q. Lanigan—is he any relation to the Lanigan on Bryant Street?

A. I don't know. I know he is in the real estate business.

Q. All right. Anybody else?

A. I don't recall any others; it was about four years ago.

698 Q. In the 100 block of Bryant Street, in addition to the people that you have listed: Holmes, McCurdy, Richmond, Weitz, Fowler, Thrift—do you know of any other real estate operators operating in Bryant Street, in the 100 block?

A. Well, the Cafritz Construction Company—I don't know whether you would call it operating—they had to take it in because the payments were not made on the house and then they sold to the Purdues, I think, about two years ago.

Q. Cafritz Construction Company, of course none of their officers ever occupied this Purdue house?

A. No.

Q. Now, Park Place. Can you tell me in the areas in Park Place—

The Witness: I don't know enough about Park Place, Mr. Houston, to answer. My recollection there is quite vague.

By Mr. Houston:

Q. How about Warder Street?

699 A. There—there was real activity among speculators.

Q. Could you mention some?

A. Barto Crivella—

Q. (Interposing:) I am talking now in the covenanted area.

A. I am, too.

Q. How do you spell that?

A. C-r-i-v-e-l-l-a.

Q. All right.

A. Mr. Bello, a negro agent or a Cuban agent; he speaks English with an accent; I don't know what he is. He looks colored.

Pat Troiano; I don't want to forget myself, Raphael G. Urciolo; John W. Rouse; there is a man on First Street, in the 1500 block—I can't remember his name—

Q. (Interposing:) Do you know whether the Parks Company operated on Warder Street?

A. I do not know that.

Edward Wills operated up there. That is all. I can remember for the present.

Q. All right. You are generally familiar—

A. I am sorry, I can remember another; Martin Isen.

Q. From your own operations, you are familiar with the general prices that were paid in these different areas that

I have indicated. Can you state whether the negroes  
700 had to pay an advance over what the whites paid?  
Over and above commissions?

A. At least—

Q. (Interposing:) And the cost of any repairs and renovations?

A. At least \$2,000 more, and I don't know of a single exception to that case, except one that I sold, being an all-cash transaction for \$1,500 profit, and that was through Penn Real Estate Company. They are the ones that I was trying to remember, on First Street.

Q. Henry Penn?

A. Henry Penn.

Q. Can you state, Mr. Urciolo—are you familiar with any of these cases in which injunctions have issued against the negroes—

A. Yes.

Q. Will you state whether or not the property has gone back into friendly white hands so that later the negroes can get it back again?

A. I have never known of a case where an injunction has issued and the negroes have been forced out, except in two instances: In the Hundley versus Gorewitz case, on Thirteenth Street—the Hundleys had to move out; and in the Haywood case in Fifteenth Street, northeast—they were forced out,—in the other cases always something has happened, usually an abandonment or a compromise, 701 and the negroes are still there.

Q. Do you know whether in the Hundley case, title was so placed that it was available to the Hundleys—would have been available to the Hundleys later on?

A. Oh, yes.

Q. Do you know whether in the Haywood case, that the title was so placed that it will be still available to Haywood at the expiration of the covenant?

A. That is only my understanding; I am not certain of it.

Q. Do you know of any case, except where the negroes have compromised by re-selling to the whites at a profit to themselves, that the negroes have not put the property in some white person's hands where it would be available to them later on?

A. Yes; you hear this often—that is often being done: In other words, if an injunction issues, especially in the case of where a restrictive agreement has only a year or two or three to run, and an injunction issues, then the gen-

eral practice is, the negro will put it in some white straw and have a separate agreement under seal that when it expires it will deed to them.

Q. On Adams Street—in the 100 block of Adams Street, right back of Bryant Street—can you state about how many cases, if you know, were filed against the 702 negroes on that street?

A. Well, two in which I was involved, and five others, mentioned by Mr. Gilligan as having previously been filed.

By Mr. Houston:

Q. In the two that were filed against you, were injunctions issued?

A. Injunction was issued in both cases.

703 Q. What was the dividing line?

A. Mr. Gilligan contended that North Capitol Street was the dividing line; I am sorry. I retract that answer.

I don't know what Mr. Gilligan contended was the dividing line. All I know is that several real estate men testified was the dividing line. What Mr. Gilligan's contention was, I don't know, or I don't recall.

Q. Do you recall—do you happen to recall the terms under which those cases were terminated, which Mr. Gilligan terminated as his cases? If you don't, say you don't.

A. Vaguely, I do. What happened was that the injunctions were granted. The two cases were consolidated and were sent to the Court of Appeals.

Q. But you don't remember—you weren't present when Mr. Gilligan discussed the conditions under which he was willing to abandon those cases?

A. I don't recall.

Q. All right. Were the cases abandoned?

704 A. The cases were abandoned. The negroes are still there.

Q. In the Adams Street cases, was any negro able to buy the property on Adams Street in the 100 block for the price that was given the white owners plus commissions and plus repairs?

A. None.

Q. Did he pay less or more?

A. They paid at least \$2,000 more for each and every house, and in some cases as high as \$4,000 more.

Q. What will be the effect in your opinion—How long have you been in the real estate business?

A. Actively and exclusively for ten years.

Q. Your operations are not confined to these neighborhoods, either vulnerable neighborhoods or mixed neighborhoods and changing neighborhoods, are they?

A. Definitely no.

Q. Nor is your business confined to the types of houses which are represented, I mean the market value or values which are represented by the houses on Bryant Street, Randolph Place, Adams Street, and so forth, that we have talked about?

A. Sorry, I didn't understand.

Q. Do you sell houses, or do you handle houses much more valuable than the houses on Bryant and Adams and Randolph?

A. Why, yes, I sold houses for \$25,000. I sold one last week for \$19,000. I bought one last week for \$20,000; that is, \$20,500. But generally, it is the smaller type house that I sell, buy and sell, because there is greater demand. In other words, if you buy an old house and fix it up yourself, it pays you to do so because the average buyer won't buy a dilapidated house and we get it for what we term a song.

Q. Well, now, tell me as to whether there is a greater shortage of houses for negroes than for whites, in the District of Columbia, in the level of houses represented by middle-class houses, as far as you know.

A. I can, with assurance, state that the shortage exists for all, both white and colored; but that the shortage is at least five times as great for the colored than it is for the white.

Q. Will you state in your opinion as a real estate man what is going to be the effect of the new housing construction program beginning now, with the termination of the war, on the desirability of these older houses, the type of Bryant Street and Adams Street, for white occupancy and ownership?

\* Mr. Gilligan: I object to this if Your Honor please. I don't think that it makes a bit of difference what his opinion is about that.

The Court: Sustained.

By Mr. Houston:

Q. Were there any vacancies in the Bryant Street properties at the time you bought?

706 The Witness: Yes.

By Mr. Houston:

Q. What were they?

A. 152 Bryant Street.

Q. And how long, if you know, had it been vacant?

A. I don't know.

Q. Any others?

A. None, to my knowledge.

Q. Do you know whether 116 Bryant had been vacant for any time prior to the Hurds buying?

A. I don't know for certain. It seemed as if it were locked up, but I never knew for certain.

Q. Did you sell—Did you make the first sale of a house on Bryant Street to a person who is alleged to be a negro?

A. I most certainly did not.

Q. How long was it after the sale—how long was it after any sale of a covenanted house to a person alleged to be a negro, before you sold?

A. At least a year.

Q. At the time you purchased on Bryant Street, had the Italian families already acquired properties and moved in, in those covenanted houses in Bryant Street?

707 A. Yes, sir.

Q. Now, will you state how many Italian families had either bought or moved into Bryant Street at the time you bought?

A. Well, the Marchegianis, the Giancolas, the De Ritas, the Pizzas, and either before or comparatively simultaneously thereto, the Garzonis.

Q. Now, Marchegiani has what house, if you know?

The Witness: It is 146.

Mr. Gilligan: Read the record, please:

(Record read by reporter.)

By Mr. Houston:

Q. Now, did any other Italian families move into the neighborhood, since you bought?

A. Yes, I put in an Italian family in 152 Bryant Street.

Q. What is the name there?

708 A. Mrs. Amoia.

Q. All right.

A. I couldn't get anyone else to rent it. I promised her that I would rent the upstairs for her; she had been put out of her house, and I advertised in the Star several times, advertising two large rooms, kitchen and bath and all utilities for \$35 a month, and to date, I had been unable to rent the apartment for her because colored live next door.

Q. And is that an uncovenanted house?

A. That is a covenanted house.

Q. 154, you said, was covenanted?

A. 154 is covenanted.

Q. I say 154 is uncovenanted, is that right?

A. Oh, yes; that is occupied by negroes.

Q. And you, Mr. Urciolo, are Italian, are you not?

A. I am.

Mr. Houston: I think that is all.

Cross-examination.

By Mr. Gilligan:

Q. I have three or four questions, Mr. Urciolo. 152 Bryant Street—you bought that from Mr. Hugh Thrift?

A. Through an agent, not direct.

Q. Didn't you see Mr. Thrift himself?

A. I don't recall.

Q. Do you understand why he was selling the house?

709 A. No, sir.

Q. You don't know whether or not he had sold it to a negro and that he had had the deal set aside in order that he might sell it to a white person? You ought to remember that.

A. No—yes, I remember Mr. Parks mentioning something on the stand here, but not at the time that I bought it. Had I known that, Mr. Gilligan, I probably would have offered him \$2,000 less because I would have known that he could not sell it at any price.

Q. Suppose he lost a thousand dollars in getting the colored people to give up the property in order that he might sell it to white, would you still say that you would have offered him \$2,000 less?

A. Yes, I know that I can sell those properties and set my own price, when, if I can find a covenanted house, adjacent to negroes, I can practically set my own price.

Q. It doesn't make any difference whether it is adjacent to negroes or not, does it?

A. What?

Q. It doesn't make any difference to you whether it is adjacent to a covenanted house, or not, does it?

A. No, because I can set the price so low that I can always find some white family to buy or to rent it at half the rent and still make money.

Q. As a matter of fact, the reason—as a matter of fact, the only reason you have not sold 152 and the other two houses you still own, to negroes, is because you are just waiting for this case to get out of the way, is it not?

A. I wouldn't say that. I didn't wait for this case to get out of the way to sell the others. The reason it hasn't been sold is because nobody offered me a contract.

Q. In other words, if the contract were offered you right now for the purchase of those three houses to anyone, by negroes, and it met your price, you would sell it to them?

A. I certainly would. I am contemplating now 114 Bryant Street which has been offered to one of my salesmen today, there—or rather, day before yesterday, and I said, "Well, ask him how much he wants," and I was told that all they are waiting for is the outcome of this suit so that they can raise the price.

Q. They are waiting, but I am asking you about yours.

A. Myself, I will sell to whomever gives me my price.

711

Q. Let's

A. Not 152, though, because 152—I have senti-

mental reasons and unless I get a very huge price it is not on the market; in other words, the other two are.

Q. Mr. Houston asked you about Randolph Place.

You were a defendant, I believe, in the case at 55 Randolph Place, were you not?

A. I and about a dozen others.

Q. 55 was the first case that was brought?

A. I was the defendant.

Q. And the Jeffersons, I believe, were the other defendants?

A. Yes.

Q. And in that case, was there a judgment rendered against you and the different Jeffersons?

A. There was.

Q. A permanent injunction and a setting aside of the deeds?

A. I don't recall the terms, but I know that there was an injunction.

Q. In connection with Randolph Place, R Street, just one block south of Randolph Place, that is, is it not?

A. Exactly.

Q. What is the color of R Street, so far as negroes and whites are concerned?

712 A. In the 100 block, northwest?

Q. No, the unit block.

A. The unit block of R Street, Northwest?

Q. Immediately behind the block at 55, where you bought and where the injunction was issued.

A. To my best recollection, that is now colored. These neighborhoods are changing so fast it is hard to keep up with them, but I am quite sure they are colored.

Q. How long has R Street been colored in that unit block?

A. In the last year.

Q. How about 15 years?

A. R Street?

Q. Yes, in the unit block, between North Capitol and First Street, do you know as a fact that the block has been colored at least 15 years, maybe 18 years?

A. No, I didn't know that.

Q. All right.

What about Seaton Place?

A. Seaton Place went colored about a year and a half ago.

Q. Yes, so that at the time the injunction was granted against you on R Street—I mean on Randolph Place—the street immediately to the south of you—Randolph Place was entirely occupied by colored, and Seaton Place, a 713 block and a half above, was largely occupied; that is correct, is it not?

A. At least one third.

Q. And First, itself, which adjoins Randolph Place in the unit block, was all colored, down there?

A. Correct.

Q. And everything to the west?

A. Everything to the west.

Q. And to the south?

A. Oh; 98 per cent, anyway.

Q. I would like to ask just one or two questions about Adams Street.

Can you tell the Court just how Adams Street, in the 100 block, divided up as to covenants and noncovenants?

A. Yes, I can.

Q. Tell him, if you please.

A. Adams Street, from the houses 112 to 134 were perpetually covenanted against negroes; the houses 136 to 142, across the street—

Q. (Interposing) Can't you take the south side of the street, while you are on it?

A. That is the south side.

Q. All right. Flagler Place comes in there.

714 A. Yes, Flagler Place was perpetually covenanted against the negroes; four houses adjacent to 134, and immediately in the rear of 134—

Q. I am not asking about Flagler Place. I am asking about Adams Street.

A. Adams Street on the north—

Q. Let's finish Adams Street, on the south side.

A. All right, on the south side, all other houses to the west on the south side, of Adams Street were occupied by negroes.

Q. And uncovenanted?

A. Uncovenanted.

Q. How many were there?

A. About ten, I don't know exactly.

Q. Or more?

A. Or more, I don't know?

Q. Go directly behind that block on Bryant Street which is in the suit, that is, on the north side:

A. The houses on the north side of Adams Street, the houses 115 to 133, inclusive, were occupied entirely by negroes.

Q. Uncovenanted?

A. Uncovenanted.

Q. Very well.

A. Those houses, 135 to and including 151, were perpetually covenanted against sale or occupancy by negroes; 153 to about 177 were uncovenanted, and exclusively occupied by negroes. That is the entire statement, with the exception that I also maintained that the people in 116 Adams Street, which had been there seven years, were and still are people of the colored race.

Q. But so far as the covenanted and uncovenanted houses are concerned, you have given the true picture of that street?

A. I trust I have.

Q. Suppose I put it this way: There were 31 houses uncovenanted and 25 covenanted; is that correct?

A. That is about correct—that is correct.

Q. And on the north side, 9 houses in the middle of the block were covenanted, and all to the east of those and all to the west of those were uncovenanted?

A. That is correct.

Q. On the north side of Adams Street, in the middle of the block there were about 9 houses that were covenanted, had deed covenants, perpetual covenants?

716 A. Correct.

Q. And all the houses on the east of those 9 in the middle of Adams Street in the 100 block, and all of the houses to the west of those 9 in the 100 block of Adams Street were uncovenanted and occupied by negroes?

A. That is correct.

Q. So that with all the speculators with whom you have dealt and who have dealt in houses in that community, you

seem to be practically the only one deliberately selling to negroes, where there are covenants, don't you?

A. I beg pardon, I am not:

Q. You have testified that you dealt with these  
717 speculators, one or two cases, there were a number of times before they got to you, but always in the end, they came into your possession?

A. That is not correct.

Q. These houses that we are now talking about—

A. Adams Street and Bryant Street, yes; but as to the others I testified to, all those other injunctions I testified to,—they were not against me.

In the Haywood case, it was against Barney O. Weitz, and in the Horowitz, Patrick D. Holmes.

Q. I am talking about these in which you are concerned now. After all, was said and done, all of this speculative buying and selling was out of the way, you became the sole owner and you sold to negroes where there were covenants in these cases, that is what I am talking about.

A. Except Frederick Richmond, or Ryan, whoever he is, that sold it first.

Q. Except the Hurd house.

A. Then, the answer is yes.

Mr. Houston: Let me find out. Is Mr. Gilligan talking about the Bryant Street houses, or is he talking about Bryant Street and Adams Street and Randolph Place, although—he said “these”, so I don't know.

By Mr. Gilligan:

Q. Let's put it Bryant Street, Adams Street. Ran-  
718 dolf Place, in which you have been dealing, they finally get in your hands and you were the real estate man that sold them to negroes despite the covenants.

A. I sold to—I sold 55 Randolph, and I sold several others thereafter, but there were also other agents who sold.

Q. And you are also a defendant in the suit on Randolph Place for a number of houses you sold to negroes, are you not?

A. Yes.

Q. Which has never come to trial yet?

A. That is correct.

Q. And all the houses on Adams Street that you own, which were covenanted, you sold to negroes?

A. Certainly.

Q. Did you not also frequently put the negroes into the houses practically at the same time before any action was brought against you, sort of a concerted matter?

A. Not at the same time, no.

Q. About the same time?

A. Two moved in at the same time.

Mr. Houston: Just a moment. If Your Honor please, the seller does not put them in the house, he does not put me in a house, I put myself in my own house. Therefore, I object to the question.

Mr. Gilligan: Let's put it that way: Mr. Urciolo buys six houses and Mr. Urciolo sells six houses to negroes  
719 and puts them into the houses about the same time—

Mr. Houston: Wait a minute, you say "he" puts them in.

Mr. Gilligan: The seller, yes.

Mr. Houston: The seller does not put anybody into a house at all, I put myself in my house, and a purchaser puts himself in his own house.

Mr. Gilligan: He buys the house and goes into it—

The Court: Let us go ahead with the examination.

Mr. Houston: I object to the question.

The Court: He may answer.

By Mr. Gilligan:

Q. Let me ask in regard to the Adams Street houses, the houses that you bought and sold to negroes, you sold them and you saw to it that the houses were occupied practically all at the same time by those negro purchasers?

A. The first two were in within one day or so of each.

Q. And the other three were shortly thereafter?

A. I don't know how much more, not far thereafter. You see, there was a plenty of houses then.

Q. So that there was no trouble about the vacancy.

A. No trouble at all.

Q. And you saw that those houses were vacated and the negroes moved in, just about the same time before any action could be brought, in other words, put it this way—the idea in your mind was perhaps that the mass oc-

720 cupancy of these covenanted houses by negroes would unquestionably defeat any action that might be brought against you?

A. I wouldn't say that was in my mind.

Q. You won't say it was not in your mind?

A. It is in there now, you put it there; but that is about all.

Redirect examination.

By Mr. Houston:

Q. Mr. Urciolo, if you can buy a house and get it vacated before you sell it, so that you can tender the purchaser a vacant house, can you get a higher price for a vacant house than you can get for a house which is owner-occupied or tenant-occupied?

A. We add as a rule of thumb, ten percent to be able to deliver a vacant house, to the price.

Q. So that race has nothing to do with it, it is a question of making money, if it is possible to obtain the possession of the house before you sell it?

A. Exactly. For example, in a house last week I would have paid \$22,000 for it. I thought it was owner-occupied, but the agent told me that there was a tenant, so I offered my highest price of \$20,500, or \$1500 less because it would take me a year to get the tenant out.

721 Q. As a matter of fact, before the limitations of the Rent Control, was it your practice not only to get the houses vacated but also to renovate them before you put them on the market?

A. Always, it always paid.

Q. Then, did the fact that the houses were vacant on Adams Street have anything to do with the covenant, or did you have the houses vacated on Adams Street so that you might renovate them before offering them and putting them on the market?

A. In all those cases except as to the house that was sold to Deputy Marshal Neeley, in the Municipal Court, they were all renovated before being sold.

Q. And they were all vacated before they were renovated?

A. Definitely.

Q. So that the fact that the purchaser might move into a vacant house when he has bought, within one or two days after the settlement of the sale, has that anything to do with it, any significance?

A. Well, it has significance in that I could get a higher price for it because it is always accessible to being shown. I do not have to call the tenant. Some tenants won't show them. It makes a better appearance. That is the only significance that I attached to it.

Q. I mean, does that have any significance so far  
722 as the covenant was concerned, or so far as trying to get negroes in there, in a hurry?

A. None at all. I remember distinctly when they were sold, I notified the tenant to move, and the next day she was out.

Q. Was there any attempt to put the negroes in there other than to sell the negroes the property; otherwise than in the regular course of business?

A. Not that I know of.

Q. Did the purchasers thereafter move in on their own responsibility and without any aid or assistance from you?

A. There was no aid or assistance from me. In some cases, I didn't even see them, most of them were sold through other offices.

Q. Now, did you sell any houses on Bryant Street, or Adams Street, right back of that block on Bryant Street, had gone, practically 100 percent colored?

A. No, sir, it had not gone 100 percent.

Q. I said practically; of the 56 houses in the 100 block of Adams Street, how many houses are still white occupied?

A. Two.

Q. Now, was that the proportion of white occupancies, that is, 2 out of 56,—was that proportion of the white in the 100 block of Adams Street when you sold the  
723 first house on Bryant Street to a negro?

A. Yes.

Q. And the negro population then had moved up split right up against the 100 block of Bryant Street at the time you sold houses in the 100 block of Bryant Street to negroes?

A. That is correct.

Q. Mr. Urciolo, in the 100 block of Bryant Street, which contained approximately 31 houses of which 11 were occupied by negroes, uncovenanted, and approximately 5 or

6 occupied by Italian families,—did you consider that block a white block?

A. Definitely no.

Recross examination.

By Mr. Gilligan:

Q. It didn't make any difference whether you considered it a white block or not, did it?

A. Certainly it did.

Q. It hadn't elsewhere, had it?

A. (No response.)

Q. You testified that you didn't believe in covenants, have you not?

A. I testified I don't believe in racial covenants, I believe in covenants, though.

Q. Racial covenants?

A. Racial covenants, no.

724 Q. These two houses on Adams Street to which you have just testified as being still owned by white people, would you give them as much for your houses now as you would have given had you purchased them when the rest of the block was white?

A. I might give him more now.

Q. More now?

A. Yes, especially for the one on the north side. The one on the south side I have my doubts now, because it has a very serious crack in it. I am afraid for its foundation.

Q. How much would you give for the house on the north side?

A. For the house on the north side, I will give her \$10,000.

Q. And how much would you give for the house on the south side?

A. About four, maybe five.

Mr. Gilligan: That is all.

## 725 Further redirect examination.

By Mr. Houston:

Q. As to the houses you bought along the north side of Adams Street in that 100 block, what was the average price you paid for them?

A. \$4700.

Q. So that the \$10,000 which you would now pay the owner represents over \$5000 increase?

A. Yes.

Q. The houses on the south side of Adams Street, what did you buy those for?

A. Around \$4,000 to \$4,500 on the west side of Flagler Place; \$4500, or I might say \$3500 to \$5500 on the east side of Flagler Place.

Q. If that house on the south side of Adams Street still being occupied by a white person were in good condition, what would you pay for that, what would you give the white owner for that?

A. Today?

Q. Yes.

A. About \$6000.

Q. Now, are those the two families, the same two families that brought suit against the negroes for injunction and stated that the presence of negroes in the neighborhood would be absolutely ruinous of their peace of mind, and so forth, depreciative of their property?

726 A. They are, with the exception of Mr. Bishopp's mother, who around that time died.

Q. But on the north side, it was the Mussons?

A. It was.

Q. On the south side, the Bishopp's?

A. Yes.

Q. They were the plaintiffs in the suits against you and the negroes on Adams Street?

A. That is correct.

Q. And they have still remained there?

A. They are still there, both of them.

Q. So far as you know, have they had any trouble with their negro neighbors?

A. To the best of my knowledge, no.

727 Thereupon JAMES M. HURD was recalled as a witness by and on behalf of the Defendants, and, having been previously duly sworn, testified further as follows:

Further redirect examination.

By Mr. Houston:

Q. Yesterday there was testimony to the effect that you had marked an application for renewal of your license as colored.

A. Yes, sir.

Mr. Gilligan: Negro.

Mr. Houston: Sorry: negro.

By Mr. Houston:

Q. What were the circumstances?

A. Well, when I first got my license I didn't put anything on it, and since I have been mailing the cards in. I have never been to the Traffic Bureau for my license since the first time I got it way back in 1926; and by them sending the card, that is the only thing I seen on there, and I just marked it "C" on it; and another thing, which I forgot to tell you before, in my traveling around, that I have been marking—

728 Q. Are there any other occasions on which you have been classified as a negro?

A. Several occasions.

Q. All right, state them.

A. I had a job one time that a negro didn't hold, and by me having this job, why the colored and white would always become—

The Court: Wait a minute. He just wants to know the places.

The Witness: That was in Cleveland, Ohio, at the Browns Aviating Company.

By Mr. Houston:

Q. All right, any others?

A. Well, here in Roslyn, Virginia, at the welding company

over there—I can't call the name—yes, Thompson Welding Company.

729-731 Further recross examination.

By Mr. Gilligan:

Q. Did you sign the cards which were displayed yesterday and sent in for your renewal of license?

A. I have signed it for the last five years.

The Court: Answer the question.

By Mr. Gilligan:

Q. And you underscored the word "Negro" and put a little "x" in the box afterwards?

A. I don't know about it. I put "C" under there, that is all I put on the card.

The Court: He signed it.

Mr. Houston: That is our case.

The Court: Do you have anything else?

Mr. Gilligan: Nothing to offer at this time.

Mr. Urciolo: At this time, your Honor, I would like to make a motion that the complaints be dismissed because the plaintiffs have not shown any privity of estate as between them and the original grantees, particularly is this true as to the plaintiffs Hodges, who were the first grantees of a subsequent group of six houses:

It is my contention that they can bring a complaint against the defendants Hurd and the defendant Rowe, in as much as they were prior grantees, or successors to grantees, and therefore the benefit of this covenant inured to the plaintiffs Hodges.

However, the benefit of the covenants on the houses owned by the defendants Stewart and Savage since, according to the record, at least, they were not even built or sold to anyone. Certainly those, the plaintiffs Hodges, could not have relied on those covenants which were not even yet in

existence, for any benefit that might inure to them as plaintiffs.

The Court: The Court thinks it is appropriate to regard the issue raised by this motion as one which necessarily will inhere in the final determination of the case because, should the Court sustain the motion, it would be tantamount to saying that the plaintiff had failed to make a cause of action.

Mr. Urciolo: Not exactly, yet in a sense it would, but all it would do is to put upon plaintiffs the burden of proving privity of estate, and nothing else, which I maintain now they have not done.

The Court: I shall reserve present ruling upon this motion and will let it adhere, with the determination of the case.

Mr. Houston: Will your Honor let the record show that I join in the motion?

The Court: Very well.

. . . . .  
*Findings of Facts and Conclusions of Law*

By Order of Court the above cases were consolidated for trial. Civil Action 26,192 was brought by Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola, Margaret Giancola, Francis M. Lanigan, John J. Luskey and Marie E. Luskey against James M. Hurd, Mary L. Hurd, Francis X. Ryan and Mary R. Ryan.

Civil Action No. 29,943 was brought by the same plaintiffs (omitting Francis M. Lanigan, deceased) and, in addition, Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner against Raphael G. Urciolo, Florence E. Urciolo, Robert H. Rowe, Isabelle J. Rowe, Herbert E. Savage, Georgia N. Savage and Pauline B. Stewart.

From Civil Action No. 26,192 plaintiffs John J. Luskey, Marie E. Luskey and Francis M. Lanigan were withdrawn. From Civil Action 29,943 the same plaintiffs were withdrawn, as were Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner, leaving as plaintiffs in both cases Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola.

Pursuant to Rule 52 (Federal Rules of Civil Procedure) the Court finds the facts and states its conclusions of law thereon as follows:

1. Plaintiffs are persons of the white race; defendants Hurd, Rowe, Savage and Stewart are persons of the negro race; defendants Ryan and Urciolo are persons of the white race. All of the parties are citizens of the United States, except Victoria de Rita, who has filed her petition for naturalization.
2. The plaintiffs Frederic E. Hodge and Lena A. Murray Hodge are the owners in fee simple and the occupants of Lot 143, Square 3125, improved by premises 136 Bryant Street, N. W.; plaintiffs Pasquale de Rita and Victoria de Rita are the owners in fee simple and the occupants of Lot 108, Square 3125, improved by premises 128 Bryant Street, N. W.; plaintiffs Constantino Marchegiani and Mary M. Marchegiani are the owners in fee simple of Lot 110, Square 125, improved by premises 124 Bryant Street, N. W., they having moved to a new home in Maryland prior to the trial, their Bryant Street house being now occupied by a tenant paying \$95 monthly rent; plaintiffs Balduino Giancola and Margaret Giancola are the owners in fee simple and the occupants of Lot 808, Square 3125, improved by premises 130 Bryant Street, N. W.
3. In or about the year 1906 the 20 lots immediately west of the alley west of First Street in Square 3125 were improved by dwellings known as 114 to 152 Bryant Street, N. W., all of them being sold subject to the following deed covenant:
 

“Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars, which shall be a lien against said property.”
- The 11 lots adjoining said twenty lots westerly to Second Street, N. W., built about the same time, were improved by dwellings known as 154 to 174 Bryant Street, N. W., none of said properties being subject to any restriction as to negro ownership or occupancy.
4. All lots in the 2300 block of First Street, N. W. in Square 3125, adjoining the 20 feed covenanted lots on

Bryant Street, are subject to the same covenant, as are also 9 lots in the middle of the north side of Adams Street, N. W., all other houses on Adams Street, N. W. in Square 3125 being subject to no restrictions as to negro ownership or occupancy.

With the exception of 4 houses in the 2100 block of First Street, N. W., (now occupied by negroes) all houses on First Street from T Street to the Soldiers Home and all houses to the east of First Street to and including Lincoln Road, from T Street north to the Soldiers Home are occupied by persons of the white race.

5. The territory west of First Street, N. W., from 829 Rhode Island Avenue north to Adams Street, has been almost solidly occupied by negroes for at least 15 years. There has been extensive negro penetration also to the north and west of Square 3125 (west of Second Street) extending into the Park View territory.

6. The 100 block of Bryant Street, N. W. consists of 31 dwellings, all on the south side of said street. The U. S. Government reservoir and filtration plant, McMillan Park and the District of Columbia Pumping Station front on the north side of said street, running from First Street to within about 100 feet of Fourth Street, N. W. On the south side of Bryant Street, west of Second Street for approximately 150 feet are located a District storage yard, and two District garages.

The 20 lots subject to the deed covenant aforesaid have continuously been occupied solely by white persons (except as to three houses occupied for brief periods by negroes, who moved on protest without legal action being necessary) until the sales to and occupancy by the negroes described in these actions. The 11 lots west from the covenanted properties to Second Street, not under covenant, have been continuously occupied by negroes for 20 years. For twenty years there has been no trend to or penetration by negroes, and can be none, except in the deed covenanted properties.

7. The defendants Hurd are the owners and occupants of Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W. Their immediate grantors were the defendants Ryan, who conveyed the property to the defendants Hurd by deed dated May 4th, 1944, recorded May 9th, 1944 as Instrument No. 12561, the Hurds having actual as well as constructive notice of the deed covenant.

The defendants Rowe are the owners and occupants of Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W. Their immediate grantors were the defendants Urciolo, who conveyed the property to them by deed dated March 10, 1945, recorded March 21, 1945 as Instrument No. 9208, the Rowes having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendants Savage are the owners and occupants of Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W. Their immediate grantor was the defendant

Florence E. Urciolo, who conveyed the property to them by deed dated March 13, 1945, recorded March 30, 1945 as Instrument No. 10582, the Savages having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendant Stewart is the owner and occupant of Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W. Her immediate grantor was Florence E. Urciolo, who conveyed the property to her by deed dated March 9, 1945, recorded March 21, 1945 as Instrument No. 9210, said defendant Stewart having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon her.

The defendant Florence E. Urciolo is the record owner of Lots 109, 135 and 139, Square 3125 as a "straw" party, the actual owner being the defendant, Raphael G. Urciolo, who had actual notice as well as constructive notice of the deed covenants binding said properties by letter dated June 17, 1944 from Henry Gilligan, attorney for plaintiffs in this case. Defendant Raphael G. Urciolo stated at the trial these properties were for sale to Negroes.

Defendants Urciolo filed Civil Action No. 27958 on March 6, 1945, seeking an "injunction and to quiet title" as the owners of the six properties described herein, naming as defendants all other owners of the 20 deed covenanted lots in the 100 Block of Bryant Street, N. W., said action seeking an injunction restraining defendants "from attempting to obtain either equitable or legal relief by way of enforcement of said covenant" and declaring the covenant "null and void as a cloud on the respective titles of plaintiffs" (Urciolos). After selling three of said

properties to the defendants Rowe, Savage and Stewart, negroes, Civil Action No. 27958 was dismissed by their attorney, Charles H. Houston.

8. There has been no constant or substantial penetration of negroes into the area described in paragraphs 3 and 4 hereof sufficient to show that the purpose of the covenant herein has been frustrated or that the result of enforcing it would depreciate rather than enhance the value of the property involved, nor has it been shown that such area has so changed in its character and environment and its uses that the purpose of the covenant cannot be carried out or that its enforcement would substantially lessen the value of the property.

831

### *Conclusions of Law*

1. The covenant involved in these actions is valid under decisions of the United States Court of Appeals for the District of Columbia and the Supreme Court of the United States.

2. There has been no trend or penetration of negroes in the area involved herein to bring these actions within the exception to the rule upholding such covenants, as set forth in *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48.

3. These cases involved the same area of the District of Columbia as that involved in *Mays v. Burgess*, 79 U. S. App. D. C. 343, decided January 29, 1945, and come within the purview of that decision enforcing the restrictive covenant.

4. The defense claim of laches in not asserting the alleged covenant against the properties immediately in the rear of plaintiffs in the 100 block of Adams Street; and in inexcusable delay in attempting to enforce the covenant is not well taken. There has been no laches or undue delay.

5. The deeds from defendants Ryan to defendants Hurd and from defendants Urciolo to defendants Rowe, Savage and Stewart are null and void, and judgment should be entered accordingly.

6. Defendants should be appropriately enjoined, and judgment should be entered accordingly.

. . . . .

*Judgment*

These causes, consolidated, came on to be heard at this term, and thereupon, upon consideration thereof and pursuant to the Findings of Fact and Conclusions of law filed herein, and for the reasons set forth therein, it is, by the Court, this 10th day of December, 1945,

Ordered and Adjudged that the deed dated May 4, 1944, and recorded May 9, 1944, as Instrument No. 12561 among the Land Records of the District of Columbia, from Francis X. Ryan and Mary R. Ryan, his wife, to James M. Hurd and Mary I. Hurd, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W., is hereby declared to be in Francis X. Ryan and Mary R. Ryan, his wife.

It Is Further Ordered and Adjudged that the deed dated March 10, 1945, and recorded March 21, 1945 as Instrument No. 9208 among the Land Records of the District of Columbia, from Raphael G. Urciolo and Florence E. Urciolo, his wife, to Robert H. Rowe and Isabelle J. Rowe, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W., is hereby declared to be in Raphael G. Urciolo.

It is Further Ordered and Adjudged that the deed dated March 13, 1945 and recorded March 30, 1945 as Instrument No. 10582 among the Land Records of the District of Columbia, from Florence E. Urciolo to Herbert E. Savage and Georgia N. Savage, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

833 It Is Further Ordered and Adjudged that the deed dated March 9, 1945, and recorded March 21, 1945, as Instrument No. 9210 among the Land Records of the District of Columbia, from Florence E. Urciolo to Pauline B. Stewart be, and the same hereby is, declared null and void and of no effect, and the title to Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

It Is Further Ordered and Adjudged that defendants Francis X. Ryan and Mary R. Ryan, his wife, as to Lot

114, Square 3125, Raphael G. Urciolo as to Lot 113, Square 3125, and Florence E. Urciolo, as to Lots 144, 136, 109, 135 and 139 Square 3125, and all persons in active concert or participation with them, and each of them, be and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any of said lots unto any Negro or colored person.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, as to Lot 114, Square 3125, Robert H. Rowe and Isabelle J. Rowe, his wife, as to Lot 113, Square 3125, Herbert E. Savage and Georgia N. Savage, his wife, as to Lot 144, Square 3125, and Pauline B. Stewart, as to Lot 136, Square 3125, and any and all negroes or colored persons in active concert or participation with them, or any of them, be, and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any and all of said lots.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, Robert H. Rowe and Isabelle J. Rowe, his wife, Herbert E. Savage and Georgia N. Savage, his wife, and Pauline B. Stewart, and all persons in active concert or participation with them, be, and they hereby are, ordered to remove themselves and all of their personal belongings, from the land and premises now occupied by them within 60 days from November 20, 1945.

It Is Further Ordered and Adjudged that taxable costs be assessed against the defendants and each of them.

834

### *Notice of Appeal*

Notice is hereby given this 10th day of January, 1946 that James M. Hurd and Mary I. Hurd hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 10th day of December, 1945, in favor of Frederic E. Hodge and Lena A. Murray Hodge, Pasquale DeRita, Victoria DeRita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola against the aforesaid defendants.

835 *Order Extending Time to File Record*

Upon consideration of defendants' motion to extend time for completing and filing of the record of this cause on appeal to the United States Court of Appeals, and counsel for plaintiffs consenting to the extension, it is by the Court this 19th day of February, 1946,

Ordered, That the time for filing the record in the appellate court be extended to March 15, 1946.

836 *Order for Inclusion of Transcript of Evidence*

Upon consideration of motion of defendants to file one copy of the transcript of evidence and transmit the same with the record on appeal, and thereupon, it is this 4th day of March, 1946, by the Court

Ordered: That leave is hereby granted to file one copy of the Transcript of Evidence herein, and the Court is directed to include the same in the record on appeal and transmit the original Transcript of Evidence with the record on appeal.

837 *Designation of Record*

The Clerk will please prepare the record on appeal in this case and include the following:

1. The Complaint.
2. Motion for preliminary injunction.
3. Answer of defendants 1, and 2.
4. Order denying motion for preliminary injunction and advancing cause.
5. Motion by defendant 1, for change of trial justice and affidavit as to personal prejudice and bias.
7. Transcript of testimony.
8. Findings of fact and conclusions of law.
9. Judgment.

## 11. This stipulation.

838 District Court of the United States for the District of  
Columbia

UNITED STATES OF AMERICA, ss:  
District of Columbia:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 12, both inclusive, and 827 to 837, both inclusive, to be a true and correct transcript of the record according to designation of record by counsel filed and made a part of this transcript, and in accordance with Rule 75.(g) of the Federal Rules of Civil Procedure for the District Courts of the United States, in action entitled Frederic E. Hodge, et al., Plaintiffs vs. James M. Hurd, et al., Defendants, Civil Action No. 26192, as the same remains upon the files and of record in said Court, except the following:

The certified record of official court reporter of proceedings, pages numbered 13 to 826, both inclusive, is included herein pursuant to order of this Court filed March 4, 1946.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of March, 1946.

[SEAL.]

Clerk.

(4481)

**JOINT APPENDIX**

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1946

*United States Court of Appeals  
for the District of Columbia*

**No. 9197**

**FILED** MAY 27 1946

*Frederic E. Hodge*

CLERK

**RAPHAEL G. URICIOLO, ET AL., Appellants,**

VS.

**FREDERIC E. HODGE, ET AL., Appellees**

**Appeal from the District Court of the United States for  
the District of Columbia**

**FILED MARCH 13, 1946.**

IN THE  
**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA

JANUARY TERM, 1946

**No. 9197**

**RAPHAEL G. URCIOLO, IN PROPER PERSON, ROBERT H. ROWE, ISABELLE J. ROWE, HERBERT B. SAVAGE, GEORGIA N. SAVAGE, PAULINE B. STEWART, Appellants,**

vs.

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE DERITA, VICTORIA DERITA, CONSTANTINO MARCHEGIANI, MARY M. MARCHEGIANI, BALDUINO GIANCOLA, MARGARET GIANCOLA, Appellees**

**Appeal from the District Court of the United States for the District of Columbia**

**INDEX**

	Original	Print
Caption .....	0	1
Complaint .....	1	1
Motion for preliminary injunction.....	6	6
Answer to complaint and motion for preliminary injunction .....	7	3
Order denying injunction, advancing and consolidating causes .....	10	11
Motion of Charles H. Houston for leave to withdraw appearance as attorney for defendant Raphael G. Urciolo.....	11	12
Order granting leave to withdraw appearance of Charles H. Houston as attorney for defendant Raphael G. Urciolo....	12	13

	Original	Final
Motion for change of trial justice, and affidavit as to personal bias or prejudice.....	13	13
Note as to certified record of official court reporter of proceedings.....	15	15
Findings of facts and conclusions of law.....	16	16
Findings of facts.....	16	16
Conclusions of law.....	20	20
Judgment.....	21	21
Notice of appeal.....	23	23
Order extending time to file record to March 15, 1946.....	24	24
Order for inclusion of transcript of evidence.....	25	25
Designation of record.....	26	25
Clerk's certificate.....	28	26

# District Court of the United States for the District of Columbia

Civil Action No. 29943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, et al., Defendants.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled action, to wit:

1

Filed Jul. 28, 1945

In the District Court of the United States for the District of Columbia

Civil Action No. 29943

FREDERIC E. HODGE, LENA A. MURRAY HODGE, 136 Bryant St., N. W.; Pasquale De Rita, Victoria De Rita, 128 Bryant St., N. W.; John J. Luskey, Marie E. Luskey, 148 Bryant Street, N. W.; Costantino Marchegiani, Mary M. Marchegiani, 124 Bryant St., N.; Helen E. Pyles, 1739 Q St., N. W.; Balduino Giancola, Margaret Giancola, 130 Bryant St., N. W.; Melville Gibbs Skinner, Helen Augusta Skinner, 1832 Kilbourne Pl., N. W., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, 907 New York Ave., N. W.; FLORENCE E. URCIOLO, 1630 Webster St., N. W.; Robert H. Rowe, Isabelle J. Rowe, 50 Florida Avenue, N. W.; Herbert B. Savage, Georgia N. Savage, 3507 New Hampshire Ave., N. W.; Pauline B. Stewart, 2015 13th St., N. W., Defendants

*Complaint for Injunction*

The plaintiffs respectfully represent to this Honorable Court as follows:

1. That plaintiffs are citizens of the United States, residents of the District of Columbia, and are of the White race.

2. That defendants are citizens of the United States and residents of the District of Columbia; defendants Raphael G. Urciolo and Florence E. Urciolo being of the White race, and all other defendants being Negroes or colored persons.

3. That defendants Rowe are the present record owners of Lot 113 in Square 3125, improved by premises 118 Bryant Street, N. W., defendants Savage are the present record owners of Lot 144 in Square 3125, improved by premises 134 Bryant Street, N. W.; that defendant Pauline B. Stewart is the present record owner of Lot 136 in Square 3125, improved by premises No. 150 Bryant Street, N. W.

4. That plaintiffs are all owners of their respective properties, as follows:

Frederic E. & Lena A. Murray Lodge, Lot 143, Square 3125, being 136 Bryant St.

Pasquale & Victoria De Rita, Lot 108, Square 3125, being 128 Bryant St.

John J. & Marie E. Luskey, Lot 137, Square 3125, being 148 Bryant St.

Constantino & Mary M. Marchegiani, Lot 110, Square 3125, being 124 Bryant St.

Helen E. Pyles, Lot 141, Square 3125; being 140 Bryant St.

Balduino & Margaret Giancola, Lot 808, Square 3125, being 130 Bryant St.

Melville Gibbs & Helen Augusta Skinner, Lot 145, Square 3125, being 132 Bryant St.

5. That all of the real estate described herein as being owned by the plaintiffs and defendants is located on the south side of Bryant Street, Northwest, between First and Second Streets, in the District of Columbia (there being no development on the north side of said street other than the United States Reservoir Grounds); that all of the properties herein described, as well as all other properties on the west side of First Street, N. W., between Adams and Bryant Streets, and all properties on Bryant Street from First Street through 152 Bryant Street, were erected and sold through Middaugh & Shannon, Incorporated, said

group of houses being known as "Middaugh & Shannon, Inc. subdivision of lots in Block 25, Addition to LeDroit Park, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber County 20 at folio 1; that Middaugh & Shannon, Inc. sold all of said lots or properties by and through the usual form of deed in which the following covenant, running with the land, has appeared in the deeds to all of the properties in said subdivision, including the properties now owned, but not occupied, by the Negro defendants, all of which said deeds were duly recorded among the Land Records of the District of Columbia:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed 3 unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2000), which shall be a lien against said property."

6. That by deed dated March 10, 1945, recorded March 21, 1945 as Instrument No. 9208 in Liber 8083, folio 238, defendants Raphael G. Urciolo and Florence E. Urciolo, his wife, conveyed Lot 113, Square 3125 to the Negro defendants, Robert H. Rowe and Isabell J. Rowe. On March 12, 1945 said defendants Rowe gave a Notice to Quit to H. P. Harding, white tenant of said property, stating they desired the premises for their own personal and immediate use and occupancy as a dwelling.

That by deed dated March 13, 1945, recorded March 30, 1945 as Instrument No. 10582 in Liber 8087, folio 483, defendant Florence E. Urciolo conveyed Lot 144, square 3125 to the Negro defendants, Herbert B. Savage and Georgia N. Savage, his wife. On March 15, 1945 said defendants Savage gave a Notice to Quit to Mrs. Anna Pettit, white tenant of said property, stating they desired the premises for their own personal and immediate use and occupancy as a dwelling.

That by deed dated March 9, 1945 and recorded March 21, 1945 as Instrument No. 9210 in Liber 8083, folio 241, defendant Florence E. Urciolo conveyed Lot 136, Square 3125 to the Negro defendant, Pauline B. Stewart. On March 12, 1945 said defendant Stewart gave a Notice to Quit to the white tenant John Anselmo, stating she desired

the premises for her own personal use and occupancy as a dwelling.

That the said Florence E. Urciolo is the record owner of Lots 109, 135 and 139, Square 3125 (the actual owner being the said Raphael G. Urciolo, her husband). The said Raphael G. Urciolo and Florence E. Urciolo on March 6, 1945 filed Civil Action No. 27958 for "Injunction and to Quiet Title", naming as defendants the owners of all of said Middaugh-Shannon, Inc. properties in the 100 Block Bryant Street N. W. except those owned by himself and his wife, Florence E. Urciolo, said action seeking an injunction restraining defendants "from attempting to obtain either equitable or legal relief by way of enforcement of said covenant"; declaring the covenant "null and void as a cloud on the respective titles of plaintiffs." Thereafter, and following the sale of the properties the subject of this suit to Negroes, said Raphael G. Urciolo and Florence E. Urciolo, through their attorney, Charles H. Houston, dismissed said Civil Action 27958.

4 7. That all of the properties in said 100 block of Bryant Street, N. W. from First Street through No. 152 Bryant Street, are occupied by persons of the White race, except the property 116 Bryant Street (Lot 114, Square 3125), now owned and occupied by James M. Hurd and Mary I. Hurd, his wife, Negroes, against whom Civil Action No. 26192 is pending in this Court. All of said properties are owned by persons of the White race except those the subject of this action and 116 Bryant Street, N. W.; said Raphael G. Urciolo, actual owner of 126, 144 and 152 Bryant Street, N. W., is making efforts to sell these properties to Negroes.

8. Plaintiffs aver that all of said defendants are charged with notice by law and had actual notice or knowledge of said covenant of record herein set forth; that they knowingly and wilfully consummated the transactions, the said Negro defendants becoming the owners of the several properties in contravention of said covenant of record, which has never been abrogated or nullified and now is in full force and effect.

9. Plaintiffs purchased their several properties under the belief that said covenant was binding upon them as well as upon owners of all property in the portion of Square 3125 developed by Middaugh & Shannon, Inc.

10. Plaintiffs aver that the above mentioned and described deeds of Lots 113, 144 and 136, Square 3125, to the respective Negro defendants are a nullity and of no effect, and said deeds and conveyances confer no property rights upon said defendants; that the contemplated occupancy of said property by the Negro defendants, as well as to permit the deeds and conveyances to remain a matter of record, will be injurious, depreciative and absolutely ruinous of the real estate owned by plaintiffs, and will be harmful, detrimental and subversive of the peace of mind, comfort and property rights and interests of plaintiffs and of other property owners, and said neighborhood will become depreciative in value and undesirable as a neighborhood wherein White people may live. The injury to plaintiffs is irreparable and is incapable of ascertainment and compensation in damages, and the only adequate remedy is by way of injunction.

Wherefore plaintiffs demand:

1. That the defendants, Rowe, Savage and Stewart, be enjoined, during the pendency of this suit, and permanently 5 thereafter, from renting, leasing, selling, transferring or conveying premises 118, 134 and 150 Bryant Street, N. W., respectively, to Negroes or colored persons, and from permitting said properties to be occupied by Negroes or colored persons.

2. That the defendants Rowe, Savage and Stewart be enjoined, pending this suit, and permanently thereafter, from occupying said premises 118, 134 and 150 Bryant Street, N. W., respectively.

3. That the deeds to said defendants Rowe, Savage and Stewart, as described in Paragraph 6 of this Complaint, be cancelled, and a judgment be entered herein declaring said conveyances void and of no effect, and further declaring title to Lot 113, Square 3125, to be in Raphael G. Urciolo, and title to Lots 144 and 136, Square 3125, to be in Florence E. Urciolo, subject to the restrictions and penalty of the covenant of record herein set forth.

4. That plaintiffs have judgment for costs and for the penalty of \$2,000 against each and all of said defendants as to each property owned by such defendants, said penalties to be liens against the respective properties.

5. That they be allowed such other and further relief as shall be proper.

FREDERIC E. HODGE.  
 LENA A. MURRAY HODGE.  
 PASQUALE DE RITA.  
 VICTORIA DE RITA.  
 JOHN J. LUSKEY.  
 MARIE E. LUSKEY.  
 CONSTANTINO MARCHEGIANI.  
 MARY M. MARCHEGIANI.  
 HELEN E. PYLES.  
 BALDUINO GIANCOLA.  
 MARGARET GIANCOLA.  
 MELVILLE GIBBS SKINNER.  
 HELEN AUGUSTA SKINNER.

DISTRICT OF COLUMBIA, ss:

Lena A. Murry Hodge on oath deposes and says that she is one of the plaintiffs in this cause and she has read the foregoing Complaint by her subscribed; that the statements therein made are true to the best of her knowledge, information and belief.

LENA A. MURRAY HODGE.

Subscribed and sworn to before me this 13th day of July, 1945.

A. B. KEEFER,  
 Notary Public, D. C.

RALPH FICHTER,  
 Atty. for Plaintiffs.

HENRY GILLIGAN,  
 Atty. for Plaintiffs—900 F. St., N. W.

6 Filed Jul. 28, 1945. Charles E. Stewart, Clerk  
 In the District Court of the United States for the District  
 of Columbia

Civil Action No. 29943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL A. URCIOLO, et al., Defendants

*Motion for Preliminary Injunction*

Come now the plaintiffs through their attorney and move  
 this Honorable Court to issue out of this Court a preliminary

injunction commanding and compelling the defendants, and each of them, to conform to, abide by and comply with the deed covenant running with the land and premises known as 118, 126, 134, 144, 150 and 152 Bryant Street, Northwest (being Lots 113, 109, 144, 139, 136 and 135, Square 3125) in the District of Columbia; and further enjoining Raphael G. Urciolo and Florence E. Urciolo, and each of them, from renting, leasing, selling, transferring or conveying any of said properties to any of the defendants Rowe, Savage and Stewart, who are Negroes, or to any other Negroes or colored persons; and further, that said defendants Rowe, Savage and Stewart, and any other Negroes or colored persons, be enjoined from purchasing, renting, leasing, transferring, conveying or occupying any of the properties above described, and requiring any of said defendants, or other Negroes or colored persons who may occupy said premises or properties to vacate same and to remove therefrom all of his, her or their personal effects.

And for reasons therefor plaintiffs refer to the verified complaint filed in this cause, and to such other matters as may properly be brought to the attention of the Court.

**RALPH FICHTER,  
HENRY GILLIGAN,**

*Attys. for Plaintiffs,  
1021 Washington Loan & Trust Bldg.*

To Raphael G. Urciolo, Florence E. Urciolo, Robert H. Rowe, Isabelle J. Rowe, Herbert B. Savage, Georgia N. Savage, Pauline B. Stewart:

The points to be submitted in support of this Motion and the authorities intended to be used are attached hereto. The rules of this Court require that, if you oppose the granting of the Motion, you, or your counsel, shall within five days from the date of the service of a copy of the Motion upon you or such further time as said Court may grant or as the parties hereto may agree upon, file in reply a statement of the points and authorities upon which you rely, and serve a copy thereof upon counsel for the plaintiffs.

**HENRY GILLIGAN,  
RALPH FICHTER,**

*Attys. for Plaintiffs,  
1021 Washington Loan & Trust Bldg.*

7. Filed Sep. 5, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District  
of Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCIOLA, 907 New York Avenue, N. W.;  
Florence E. Urciolo, 1630 Webster Street, N. W.; Robert  
H. Rowe, Isabelle J. Rowe, 50 Florida Avenue, North-  
west; Herbert B. Savage, Georgia N. Savage, 3607 New  
Hampshire Avenue, N. W.; Pauline B. Stewart, 2015 13th  
Street, Northwest, Defendants

*Answer to Complaint and Motion for Preliminary  
Injunction*

Defendants expressly denying all allegations of the com-  
plaint not specifically admitted, show:

1. They have no proof and no facts on which to base a belief whether plaintiffs are citizens of the United States or residents of the District of Columbia; neither admit nor deny the same but call for strict proof. They specifically deny that plaintiffs, or any of them, are of the white race.
2. They admit their citizenship and residence, but deny that they are Negroes. As to the allegations that they are colored persons they admit they are colored persons in the same sense that plaintiffs are colored persons, but no other.
3. They admit the allegations of paragraph 3.
4. They have no proof and no facts on which to base a belief whether plaintiffs are the owners of the properties alleged, neither affirm nor deny said allegations but call for strict proof.
5. They deny the allegations of paragraph 5.
6. They admit the allegations of paragraph 6, except they deny that the tenants named in said paragraph were white.
7. They deny the allegations of paragraph 7.
8. They admit knowledge of the alleged covenant referred to in paragraph 8 but deny its legal effect. Upon advice of counsel they make no answer to the conclusions of law set forth in paragraph 8.

9. They deny the allegations of paragraph 9.

10. They deny the allegations of paragraph 10.

11. Further answering these defendants say that for over fifteen years and nearly twenty years the 100 block of Bryant Street, Northwest has been a neighborhood where all of the persons are colored or pigmented persons, and approximately half by number are supposed to be persons of the Negro race; that approximately one-third of the residences in said block for more than fifteen years have been owned and occupied openly and notoriously by persons supposed to be of the Negro race; that for approximately a year premises 116 Bryant Street, Northwest, has been occupied by a family named Hurd, whom plaintiff have on other occasions alleged to be of the Negro race; and assuming plaintiffs to be of the "white race", issuance of an injunction would not restore or create said 100 block of Bryant Street, Northwest, a "white" neighborhood.

12. Further answering these defendants say that persons going in and out of the residences of certain plaintiffs herein, and persons in other houses in said 100 block within the alleged covenanted area not made parties to this suit, appear to have more characteristics of Negroes or persons of the Negro race, whatever be the definition, than many of the defendants herein, and from appearances are distinctly colored persons.

13. Further answering these defendants say that the 100 block of Bryant Street, Northwest, and all properties west of First Street, Northwest, for more than fifteen years have constituted a distinctly colored neighborhood, according to plaintiffs' definition, and that plaintiffs Marchegiana, Giancola and DeRita purchased their said properties well knowing same to be a fact.

14. Further answering these defendants say that all the plaintiffs have lost the right to claim enforcement of the alleged covenant for that immediately in rear of their residences, on the north side of the 100 block of Adams Street, Northwest, were a group of houses, title to which was burdened of record with the same alleged covenant; nevertheless for five years they have stood by and permitted every one of said houses to be purchased and occupied by persons allegedly of the Negro race without protest; they did not join in suit to enforce said alleged covenant, and when certain plaintiffs on Adams Street abandoned the suits to enforce said alleged covenant no one of the present

plaintiffs or any one else in the 100 block of Bryant Street, Northwest, attempted to intervene, but let the case be abandoned and die.

15. Further answering these defendants say that the presence of new home owners in said block has appreciated the value of the property; that the properties of plaintiffs is run down and depreciated, and that the only properties in the block which have been improved, painted on the outside and otherwise beautified are properties owned and occupied by persons allegedly of the Negro race.

#### Defenses

1. The alleged covenant is void as being an illegal restraint on alienation; in violation of public policy.

2. The alleged covenant is unenforceable by injunction because of change of neighborhood, which makes the purported objects of the covenant unenforceable.

3. Plaintiffs have lost their claim to enforcement by laches in not asserting the alleged covenant against the properties immediately in the rear of them on the 100 block of Adams Street, and in inexcusable delay in attempting to enforce *Hodge v. Hurd*, Civil Action No. 26-192, this court, the record of which is prayed to be read as a part of this answer.

4. Defendants purchased their properties in good faith relying on the undisturbed and long continued possession of the Hurd family in premises 116 Bryant Street, Northwest.

**HOUSTON, HOUSTON & HASTIE,**  
By **CHARLES H. HOUSTON,**

*Attorneys for Defendant,*  
615 F Street, Northwest.

10 Filed Sep. 11, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District  
of Columbia

Civil No. 29-943

C. A. 26 192

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. UBICHOLO, et al., Defendants

*Order Denying Injunction, Advancing and Consolidating  
Causes*

This cause came on to be heard upon plaintiffs' motion for preliminary injunction and affidavit supporting same and respondents' answer, and further upon plaintiffs' oral motion made in open court to advance this cause for hearing and to consolidate same with the cause styled Hodge v. Hurd, Civil Action No. 26-192, and after argument of counsel and plaintiffs' withdrawing their said motion for preliminary injunction, it is this 11th day of September, 1945, Ordered:

1. That the motion for preliminary injunction be denied.
2. That this cause be consolidated with Hodge v. Hurd, Civil No. 26-192, for hearing and that both causes be assigned for hearing on the merits on October 9, 1945 or as soon thereafter as they can be heard.

By the Court: T. ALAN GOLDSBOROUGH,

*Justice.*

Seen:

CHARLES H. HOUSTON,  
*Attorney for Respondents.*

Presented by Henry Gilligan,

11 Filed Oct. 9, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District  
of Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs

vs.

RAPHAEL G. URCILO, et al., Defendants

*Motion for Leave to Withdraw Appearance as Attorney  
for Defendant Raphael G. Urciolo*

Charles H. Houston, counsel of record for the defendants  
herein, moves the Court for leave to withdraw his appear-  
ance as attorney for defendant Raphael G. Urciolo, because  
said defendant is going to represent his own interests in  
*propria persona*.

CHARLES H. HOUSTON,  
615 F Street Northwest,  
Attorney for Defendant Named.

To Mr. Raphael G. Urciolo, 907 New York Avenue, North-  
west and Henry Gilligan, Esquire, Attorney for plain-  
tiffs, Washington Loan & Trust Bldg., Washington,  
D. C.:

Please take notice of the filing of the above motion, which  
will be presented to the Motions Court, Monday, October 8,  
1945, at 10 o'clock or as soon thereafter as counsel can be  
heard.

CHARLES H. HOUSTON.

*Certificate of Service*

I certify that I have forwarded copy of the above Motion  
by mail, postage prepaid, to Raphael G. Urciolo at the ad-  
dress noted above, and have delivered copy to Henry Gilli-  
gan, Esquire, at his office above noted.

CHARLES H. HOUSTON.

12 Filed Oct. 9, 1945. Charles E. Stewart, Clerk  
In the District Court of the United States for the District  
of Columbia

Civil No. 29-943

FREDERIC E. HODGE et al., Plaintiffs,

vs.

RAFAEL G. URCILO et al., Defendants

*Order Granting Leave to Withdraw Appearance of Charles  
H. Houston as Attorney for Defendant Raphael G. Ur-  
ciolo*

Upon motion of Charles H. Houston for leave to withdraw  
his appearance as attorney for the defendant Raphael G.  
Urciolo, and there being no objections from counsel for  
plaintiffs, it is by the Court this 9th day of October, 1945,

ORDERED,

That the appearance of Charles H. Houston as Attorney  
for the defendant Raphael G. Urciolo be now withdrawn.

F. DICKINSON LETTS,

Seen:

Justice.

HENRY GILLIGAN,  
Counsel for Plaintiffs.

13 Filed Oct. 15, 1945. Charles E. Stewart, Clerk  
In the District Court of the United States for the District  
of Columbia

Civil Action No. 29-943

FREDERIC E. HODGE et al., Plaintiffs,

vs.

RAFAEL G. URCILO et al., Defendants

*Motion for Change of Trial Justice, and Affidavit as to  
Personal Bias or Prejudice*

DISTRICT OF COLUMBIA, ss:

Pauline B. Stewart, a party defendant in the above cause,  
being first duly sworn on oath states that she charges the  
Honorable F. Dickinson Letts, the Justice presiding at the

trial of this cause, with personal prejudice and bias against her; that this cause was brought against her and four other Negroes, and others not material here, to cancel the deeds and evict her and the other Negroes from certain property on Bryant Street, Northwest in the District of Columbia (affiant's property being premises 150 Bryant Street, Northwest, Lot 136, Square 3125) on the ground they are Negroes and have taken title and possession in breach of the following covenant which burdens the title to said property, according to the allegations of the complaint:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

That on Saturday October 13, 1945; affiant's counsel discovered that the presiding Justice lives in and has an interest in premises 3500 Garfield Street, Northwest (Lot 32, Square 1942 in said District), title to which is burdened by the following covenant, Liber 4660, f. 148 Recorder of Deeds:

"Subject to the covenants to run with the land perpetually, . . . that said land and premises will not be sold, rented or conveyed, the whole nor any part thereof, or any structure thereon, to any person of African descent. . . ."

That in said trial the presiding Justice has been personally biased and prejudiced against affiant and the other Negroes and in favor of plaintiffs who are alleged to be white persons because of his interest in the issues involved in this case.

14 That the instant cause came on for hearing on October 9, 1945 at 1:30 p. m.; that it was not known for certainty until that morning before whom the case would be tried; that no information was available to put affiant on inquiry and she had no reason to believe that the Justice lived in property subject to such a covenant until her counsel was given such information by telephone about 4:30 p. m. Friday, October 12, 1945; that investigation was made and the facts ascertained about 1:30 p. m. Saturday, October 13, 1945 after the Clerk's office had closed; and affiant has

made and filed this affidavit of prejudice and bias at the first possible moment after the facts were discovered.

Wherefore affiant respectfully requests that the presiding Justice proceed no further herein but that another Justice shall be designated in the manner prescribed in section 24 of Title 28, United States Code, or chosen in the manner prescribed in section 27 of said Title, or certified in the manner prescribed in Section 314, Title 11, D. C. Code, 1940 (Mar. 3, 1901, ch. 854, sec. 67) to hear and decide this cause.

PAULINE B. STEWART.

Subscribed and sworn to before me this — day of October, 1945.

Mary G. —,  
Notary Public for D. C.

*Certificate of Counsel*

I, Charles H. Houston, counsel of record for affiant-defendant Pauline B. Stewart, do hereby certify that the foregoing application and affidavit are made and presented in good faith.

CHARLES H. HOUSTON,  
615 F Street, Northwest,  
Attorney for Defendant.

Service accepted:

HENRY GILLIGAN,  
Attorney for Plaintiffs.

15 Frederic E. Hodge, et al. vs. Raphael G. Urciolo, et al. Civil Action No. 29943.

NOTE: The certified record of official court reporter of proceedings is to be found in the accompanying record, Frederic E. Hodge, et al. vs. James M. Hurd, et al., Civil Action No. 26192.

16 Filed Dec. 10, 1945. Charles E. Stewart, Clerk

In the District Court of the United States for the District  
of Columbia

Civil Action No. 26,192

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

JAMES M. HURD, et al., Defendants

Civil Action No. 29,943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCILO, et al., Defendants

*Findings of Facts and Conclusions of Law*

By Order of Court the above cases were consolidated for trial. Civil Action 26,192 was brought by Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola, Margaret Giancola, Francis M. Lanigan, John J. Luskey and Marie E. Luskey against James M. Hurd, Mary I. Hurd, Francis X. Ryan and Mary R. Ryan.

Civil Action No. 29,943 was brought by the same plaintiffs (omitting Francis M. Lanigan, deceased) and, in addition, Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner against Raphael G. Urciolo, Florence E. Urciolo, Robert H. Rowe, Isabelle J. Rowe, Herbert E. Savage, Georgia N. Savage and Pauline B. Stewart.

From Civil Action No. 26,192 plaintiffs John J. Luskey, Marie E. Luskey and Francis M. Lanigan were withdrawn. From Civil Action 29,943 the same plaintiffs were withdrawn, as were Helen E. Pyles, Melville Gibbs Skinner and Helen Augusta Skinner, leaving as plaintiffs in both cases Frederic E. Hodge, Lena A. Murray Hodge, Pasquale de Rita, Victoria de Rita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola.

Pursuant to Rule 52 (Federal Rules of Civil Procedure) the Court finds the facts and states its conclusions of law thereon as follows:

1. Plaintiffs are persons of the white race; defendants Hurd, Rowe, Savage and Stewart are persons of the negro

race; defendants Ryan and Urciolo are persons of the white race. All of the parties are citizens of the United States, except Victoria de Rita, who has filed her petition for naturalization.

2. The plaintiffs Frederic E. Hodge and Lena A. Murray Hodge are the owners in fee simple and the occupants of Lot 143, Square 3125, improved by premises 136 Bryant Street, N. W.; plaintiffs Pasquale de Rita and Victoria de Rita are the owners in fee simple and the occupants of Lot 108, Square 3125, improved by premises 128 Bryant Street, N. W.; plaintiffs Constantino Marchegiani and Mary M. Marchegiani are the owners in fee simple of Lot 110, Square 3125, improved by premises 124 Bryant Street, N. W., they having moved to a new home in Maryland prior to the trial, their Bryant Street house being now occupied by a tenant paying \$95 monthly rent; plaintiffs Balduino Giancola and Margaret Giancola are the owners in fee simple and the occupants of Lot 808, Square 3125, improved by premises 130 Bryant Street, N. W.

3. In or about the year 1906 the 20 lots immediately west of the alley west of First Street in Square 3125 were improved by dwellings known as 114 to 152 Bryant Street, N. W., all of them being sold subject to the following deed covenant:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars, which shall be a lien against said property."

The 11 lots adjoining said twenty lots westerly to Second Street, N. W., built about the same time, were improved by dwellings known as 154 to 174 Bryant Street, N. W., none of said properties being subject to any restriction as to negro ownership or occupancy.

4. All lots in the 2300 block of First Street, N. W. in Square 3125, adjoining the 20 fee covenanted lots on Bryant Street, are subject to the same covenant, as are also 9 lots in the middle of the north side of Adams Street, N. W., all other houses on Adams Street, N. W. in Square 3125 being subject to no restrictions as to negro ownership or occupancy.

With the exception of 4 houses in the 2100 block of First Street, N. W., (now occupied by negroes) all houses on

First Street from T Street to the Soldiers Home and all houses to the east of First Street to and including Lincoln Road, from T Street north to the Soldiers Home are occupied by persons of the white race.

5. The territory west of First Street, N. W. from Rhode 18 Island Avenue north to Adams Street, has been almost solidly occupied by negroes for at least 15 years. There has been extensive negro penetration also to the north and west of Square 3125 (west of Second Street) extending into the Park View territory.

6. The 100 block of Bryant Street, N. W. consists of 31 dwellings, all on the south side of said street. The U. S. Government reservoir and filtration plant, McMillan Park and the District of Columbia Pumping Station front on the north side of said street, running from First Street to within about 100 feet of Fourth Street, N. W. On the south side of Bryant Street, west of Second Street for approximately 150 feet are located a District storage yard, and two District garages.

The 20 lots subject to the deed covenant aforesaid have continuously been occupied solely by white persons (except as to three houses occupied for brief periods by negroes, who moved on protest without legal action being necessary) until the sales to and occupancy by the negroes described in these actions. The 11 lots west from the covenanted properties to Second Street, not under covenant, have been continuously occupied by negroes for 20 years. For twenty years there has been no trend to or penetration by negroes, and can be none, except in the deed covenanted properties.

7. The defendants Hurd are the owners and occupants of Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W. Their immediate grantors were the defendants Ryan, who conveyed the property to the defendants Hurd by deed dated May 4th, 1944, recorded May 9th, 1944 as Instrument No. 12561, the Hurds having actual as well as constructive notice of the deed covenant.

The defendants Rowe are the owners and occupants of Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W. Their immediate grantors were the defendants Urciolo, who conveyed the property to them by deed dated March 10, 1945, recorded March 21, 1945 as Instrument No. 9208, the Rowes having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendants Savage are the owners and occupants of Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W. Their immediate grantor was the defendant Florence E. Urciolo, who conveyed the property to them by 19 deed dated March 13, 1945, recorded March 30, 1945 as Instrument No. 10582, the Savages having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon them.

The defendant Stewart is the owner and occupant of Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W. Her immediate grantor was Florence E. Urciolo, who conveyed the property to her by deed dated March 9, 1945, recorded March 21, 1945 as Instrument No. 9210, said defendant Stewart having actual as well as constructive notice of the deed covenant, moving into the property after service of the complaint in this case upon her.

The defendant Florence E. Urciolo is the record owner of Lots 109, 135 and 139, Square 3125 as a "straw" party, the actual owner being the defendant, Raphael G. Urciolo, who had actual notice as well as constructive notice of the deed covenants binding said properties by letter dated June 17, 1944 from Henry Gilligan, attorney for plaintiffs in this case. Defendant Raphael G. Urciolo stated at the trial these properties were for sale to Negroes.

Defendants Urciolo filed Civil Action No. 27958 on March 6, 1945, seeking an "injunction and to quiet title" as the owners of the six properties described herein, naming as defendants all other owners of the 20 deed covenanted lots in the 100 block of Bryant Street, N. W., said action seeking an injunction restraining defendants "from attempting to obtain either equitable or legal relief by way of enforcement of said covenant" and declaring the covenant "null and void as a cloud on the respective titles of plaintiffs (Urciolos). After selling three of said properties to the defendants Rowe, Savage and Stewart, negroes, Civil Action No. 27958 was dismissed by their attorney, Charles H. Houston.

8. There has been no constant or substantial penetration of negroes into the area described in paragraphs 3 and 4 hereof sufficient to show that the purpose of the covenant herein has been frustrated or that the result of enforcing it would depreciate rather than enhance the value of the property involved, nor has it been shown that such area has so changed in its character and environment and its uses that

the purpose of the covenant cannot be carried out or that its enforcement would substantially lessen the value of the property.

20

*Conclusions of Law*

1. The covenant involved in these actions is valid under decisions of the United States Court of Appeals for the District of Columbia and the Supreme Court of the United States.

2. There has been no trend or penetration of negroes in the area involved herein to bring these actions within the exception to the rule upholding such covenants, as set forth in *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48.

3. These cases involve the same area of the District of Columbia as that involved in *Mays v. Burgess*, 79 U. S. App. D. C. 343, decided January 29, 1945, and come within the purview of that decision enforcing the restrictive covenant.

4. The defense claim of laches in not asserting the alleged covenant against the properties immediately in the rear of plaintiffs in the 100 block of Adams Street; and in inexcusable delay in attempting to enforce the covenant is not well taken. There has been no laches or undue delay.

5. The deeds from defendants Ryan to defendants Hurd and from defendants Urciolo to defendants Rowe, Savage and Stewart are null and void, and judgment should be entered accordingly.

6. Defendants should be appropriately enjoined, and judgment should be entered accordingly.

F. DICKINSON LETTS,

*Justice.*

Dated: December 10, 1945.

Filed Dec. 10, 1945

In the District Court of the United States for the District of  
Columbia

Civil Action No. 26,192

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

JAMES M. HURD, et al., Defendants

Civil Action No. 29,943

FREDERIC E. HODGE, et al., Plaintiff,

vs.

RAPHAEL G. URCILO, et al., Defendants

*Judgment*

These causes, consolidated, came on to be heard at this term, and thereupon, upon consideration thereof and pursuant to the Findings of Fact and Conclusions of law filed herein, and for the reasons set forth therein, it is, by the Court, this 10th day of December, 1945,

Ordered and Adjudged that the deed dated May 4, 1944, and recorded May 9, 1944, as Instrument No. 12561 among the Land Records of the District of Columbia, from Francis X. Ryan and Mary R. Ryan, his wife, to James M. Hurd and Mary I. Hurd, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 114, Square 3125, improved by premises 116 Bryant Street, N. W., is hereby declared to be in Francis X. Ryan and Mary R. Ryan, his wife.

It Is Further Ordered and Adjudged that the deed dated March 10, 1945, and recorded March 21, 1945 as Instrument No. 9208 among the Land Records of the District of Columbia, from Raphael G. Urciolo and Florence E. Urciolo, his wife, to Robert H. Rowe and Isabelle J. Rowe, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 113, Square 3125, improved by premises 118 Bryant Street, N. W., is hereby declared to be in Raphael G. Urciolo.

It Is Further Ordered and Adjudged that the deed dated March 13, 1945 and recorded March 30, 1945 as Instrument No. 10582 among the Land Records of the District of Columbia, from Florence E. Urciolo to Herbert E. Savage, and Georgia N. Savage, his wife, be, and the same hereby is, declared null and void and of no effect, and the title to Lot 144, Square 3125, improved by premises 134 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

22 It Is Further Ordered and Adjudged that the deed dated March 9, 1945, and recorded March 21, 1945, as Instrument No. 9270 among the Land Records of the District of Columbia, from Florence E. Urciolo to Pauline B. Stewart be, and the same hereby is, declared null and void and of no effect, and the title to Lot 136, Square 3125, improved by premises 150 Bryant Street, N. W., is hereby declared to be in Florence E. Urciolo.

It Is Further Ordered and Adjudged that defendants Francis X. Ryan and Mary R. Ryan, his wife, as to Lot 114, Square 3125, Raphael G. Urciolo as to Lot 113, Square 3125, and Florence E. Urciolo, as to Lots 144, 136, 109, 135 and 139, Square 3125, and all persons in active concert or participation with them, and each of them, be and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any of said lots unto any Negro or colored person.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, as to Lot 114, Square 3125, Robert H. Rowe and Isabelle J. Rowe, his wife, as to Lot 113, Square 3125, Herbert E. Savage and Georgia N. Savage, his wife, as to Lot 144, Square 3125, and Pauline B. Stewart, as to Lot 136, Square 3125, and any and all negroes or colored persons in active concert or participation with them, or any of them, be, and they hereby are, permanently enjoined from renting, leasing, selling, transferring or conveying any and all of said lots.

It Is Further Ordered and Adjudged that defendants James M. Hurd and Mary I. Hurd, his wife, Robert H. Rowe and Isabelle J. Rowe, his wife, Herbert E. Savage and Georgia N. Savage, his wife, and Pauline B. Stewart, and all persons in active concert or participation with them, be, and they hereby are, ordered to remove themselves and all of their personal belongings, from the land and premises

now occupied by them within 60 days from November 20, 1945.

It Is Further Ordered and Adjudged that taxable costs be assessed against the defendants and each of them.

**F. DICKINSON LETTS,**

*Justice.*

23

Filed Jan. 11, 1946

In the District Court of the United States for the District of  
Columbia

Civil No. 29-943

**FREDERIC E. HODGE, et al., Plaintiffs,**

**vs.**

**RAPHAEL G. URCILO, et al., Defendants**

*Notice of Appeal*

Notice is hereby given this 10th day of January, 1946, that Raphael G. Urciolo in proper person, Robert H. Rowe, Isabelle J. Rowe, Herbert B. Savage, Georgia N. Savage, and Pauline B. Stewart hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 10th day of December, 1945 in favor of Frederic E. Hodge, Lena A. Murray Hodge, Pasquale DeRita, Victoria DeRita, Constantino Marchegiani, Mary M. Marchegiani, Balduino Giancola and Margaret Giancola against the aforesaid defendants.

**RAPHAEL G. URCILO, pp.,**  
907 N. Y. Ave.,

**CHARLES H. HOUSTON,**  
615 F St., N. W.,

*Attorney for Defendants Named  
Except Raphael G. Urciolo.*

Mail copy to Henry Gilligan, attorney for plaintiffs,  
Washington Loan & Trust Building, Washington, D. C.

24

Filed Feb. 19, 1946

In the District Court of the United States for the District of  
Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, et al., Defendants

*Order Extending Time to File Record*

Upon consideration of defendants' motion to extend the time for completing and filing the record of this cause on appeal to the United States Court of Appeals, and counsel for plaintiffs consenting to the extension, it is by the Court this 19th day of February, 1946,

Ordered, That the time for filing the record in the appellate court be extended to March 15, 1946.

(S.) ALEXANDER HOLTZOFF,

Justice.

I consent:

(S.) HENRY GILLIGAN,  
Attorney for Plaintiffs.

25

Filed Mar. 4, 1946

In the District Court of the United States for the District of  
Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,

vs.

RAPHAEL G. URCIOLO, et al., Defendants

*Order for Inclusion of Transcript of Evidence*

Upon consideration of motion of defendants to file one copy of the transcript of evidence and transmit the same with the record on appeal, and thereupon, it is this 4th day of March, 1946, by the Court

Ordered, That leave is hereby granted to file one copy of the Transcript of Evidence herein, and the Court is directed

to include the same in the record on appeal and transmit the original Transcript of Evidence with the record on appeal.

(S.) F. DICKINSON LETTS,

*Justice.*

We consent:

(S.) HENRY GILLIGAN,  
*Attorney for Plaintiffs;*

(S.) CHARLES H. HOUSTON,  
*Attorney for Defendant.*

26

Filed Jan. 23, 1946

In the District Court of the United States for the District  
of Columbia

Civil No. 29-943

FREDERIC E. HODGE, et al., Plaintiffs,  
vs.

RAPHAEL G. URICIOLO, et al., Defendants

*Designation of Record*

The Clerk will please prepare the record on appeal and include therein the following:

1. Complaint.
2. Motion for preliminary injunction.
3. Answer of defendants 1 to 7.
4. Order denying preliminary injunction, advancing cause and consolidating same with Civil 26192 for hearing.
5. Motion of Charles H. Houston for leave to withdraw as Counsel for defendant 1.
6. Order granting leave to withdraw.
7. Motion of defendant 7, for change of trial justice and affidavit of prejudice.
9. Transcript of testimony (See Civil 26-192).
10. Findings of fact and conclusions of law.
11. Judgment.
13. This designation.

CHARLES H. HOUSTON,  
*Attorney for Defendants 2 to 7,*  
*616 F Street, Northwest.*

RAPHAEL G. URICIOLO, pp.,  
*907 New York Avenue, N. W.*

27

*Certificate of Service*

I certify that this 23rd day of January, 1946, I forwarded copy of this designation to Henry Gilligan, Attorney for plaintiffs, Washington Loan and Trust Building, by mail postage prepaid.

CHARLES H. HOUSTON.

28 District Court of the United States for the District of  
Columbia

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 27, both inclusive, to be a true and correct transcript of the record according to designation of record by counsel filed and made a part of this transcript, and in accordance with Rule 75 (g) of the Federal Rules of Civil Procedure for the District Courts of the United States, in action entitled Frederic E. Hodge, et al., Plaintiffs, vs. Raphael G. Urciolo, et al., Defendants, Civil Action No. 29943, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of March, 1946.

\_\_\_\_\_  
Clerk.

[SEAL.]

(4460)

# United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., APPELLANTS

v.

FREDERIC E. HODGE, et al., APPELLEES

No. 9197

RAPHAEL G. URCILO, et al., APPELLANTS

v.

FREDERIC E. HODGE, et al., APPELLEES

Appeals from the District Court of the United States for the  
District of Columbia

Argued November 21, 1946

Decided May 26, 1947.

*Raphael G. Urciolo*, pro se, in No. 9197.

*Mr. Charles H. Houston* for appellants in both cases, except appellant Urciolo in No. 9197.

*Mr. Henry Gilligan* for appellees. *Mr. Thomas X. Dunn* also entered an appearance for appellees.

Before EDGERTON, CLARK and WILBUR K. MILLER, JJ.

CLARK, J.: By these appeals we are once again called upon to determine the validity of a restrictive deed covenant expressed in the following terms: "Subject also to the covenants that said lot shall never be rented; leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2000), which shall be a lien against said property."

The area involved in these actions is the first 20 lots of the 100 Block of Bryant Street, Northwest, improved by dwellings known as 114 to 152 Bryant Street, Northwest. All of these lots and dwellings were sold subject to the above restrictive deed covenant. The adjoining 11 lots improved by dwellings known as 154 to 174 Bryant Street, Northwest, are not subject to any such restriction and have been continuously occupied by Negroes for 20 years. The occupancy by white persons of the 20 lots and dwellings subject to the restriction

has been continuous<sup>1</sup> until the four deeds<sup>2</sup> complained of in these actions.

The final judgment of the District Court from which these appeals were taken declared null and void these four deeds to the Negro purchasers, ordered them to vacate the land and premises and permanently enjoined the renting, selling, leasing, transferring or conveying the said lots to any Negro or colored person.

The validity of the restrictive deed covenant before us now has been upheld by this Court on numerous occasions. *Torrey v. Wolves*, 56 App. D. C. 4, 6 F. (2d) 702; *Cornish v. O'Donoghue*, 58 App. D. C. 359, 30 F. (2d) 983, cert. denied, 279 U. S. 871; *Grady v. Garland*, 67 App. D. C. 73, 89 F. (2d) 817, cert. denied, 302 U. S. 694; *Hyndley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. (2d) 23, wherein we said: "In view of the consistent adjudications in similar cases, it must now be conceded that the settled law in this jurisdiction is that such covenants as this are valid and enforceable in equity by way of injunction."

Similarly, restrictive covenants expressed in agreements between the owners of land have been upheld by this Court in the following cases: *Corrigan v. Buckley*, 55 App. D. C. 30, 299 Fed. 899, appeal dismissed 271 U. S. 323; *Russell v. Wallace*, 58 App. D. C. 357, 30 F. (2d) 981, cert. denied, 279 U. S. 871; *Mays v. Burgess*, 79 U. S. App. D. C. 343, 147 F. (2d) 869, cert. denied, 325 U. S. 868, rehearing denied 325 U. S. 896.

The appellants here have presented no contention that is not answered by those decisions. Thus, what we said in *Mays v. Burgess* when it was before us for the first time is applicable here; "Unless, therefore, we are prepared to reverse and annul all that we have said on this subject, and to destroy contracts and titles to valuable real estate made and taken on the faith of our decisions, it follows that the only question now open for discussion is whether, under the rule announced in *Hyndley v. Gorewitz*, supra, the purpose of the restrictive condition has failed by reason of a change in the character of the neighborhood, so that its enforcement would impose a hardship rather than a benefit upon those who were parties to its terms." We went on, in that case, to hold that "no such change or transformation in the character of the property has occurred." *Mays v. Burgess* involved the same area as that concerned in the instant cases

<sup>1</sup> Except for three transactions where the Negroes involved either did not occupy or moved on protest without the necessity of legal proceedings.

<sup>2</sup> Deed dated May 4, 1944, and recorded May 9, 1944, as Instrument No. 12561 among the Land Records of the District of Columbia, from Francis X. Ryan and Mary R. Ryan, his wife, to James M. Hurd and Mary L. Hurd, his wife, concerning Lot 114, Square 3125, improved by premises 116 Bryant Street, Northwest; deed dated March 16, 1945, and recorded March 21, 1945, as Instrument No. 9206 among the Land Records of the District of Columbia, from Raphael G. Urciolo and Florence E. Urciolo, his wife, to Robert H. Rowe and Isabelle J. Rowe, his wife, concerning Lot 113, Square 3125, improved by premises 118 Bryant Street, Northwest; deed dated March 13, 1945, and recorded March 30, 1945 as Instrument No. 10682 among the Land Records of the District of Columbia, from Florence E. Urciolo to Herbert E. Savage and Georgia N. Savage, his wife, concerning Lot 144, Square 3125, improved by premises 134 Bryant Street, Northwest; and deed dated March 9, 1945, and recorded March 21, 1945 as Instrument No. 9210 among the Land Records of the District of Columbia, from Florence E. Urciolo to Pauline B. Stewart concerning Lot 136, Square 3125, improved by premises 150 Bryant Street, Northwest.

and is controlling here, especially in view of what we said when that case was before us for a second time, 80 U. S. App. D. C. 236, 152 F. (2d) 123: "When this case was here before it was argued at great length that the character of the neighborhood had changed since the making and recording of the covenants, and the points of hardship and lack of reasonable housing accommodations in the District of Columbia, now reiterated, were stressed and urged. We considered both points and held that they were not sufficient to justify the abrogation of the rule of law which this court had applied consistently in similar cases over a period of twenty-five years. The fact that since the case was originally heard below, a similar covenant, covering property in an adjoining block, has expired by time limitation and four purchases by colored people have been made, would not, even if it had occurred before decision, have changed the result. As we said in our former opinion, the neighborhood, consisting of approximately one thousand homes, churches and business properties, was exclusively occupied by persons of the white race, under similar restrictive agreements or deed covenants. The infiltration of four colored families would not have required our applying the rule we did in *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. (2d) 23, where we held the restrictive condition had failed by reason of the change in the neighborhood, so that its enforcement would impose a hardship rather than an advantage to those who complied with its terms."

It is to be further noted that while the "change in neighborhood" argument was presented to us in appellants' brief, this contention was expressly repudiated by appellant Urciolo at oral argument.

In re-affirming our holding that the restrictive deed covenant here involved is valid and enforceable by injunction we have again thoroughly considered the contention that such a restriction constitutes an illegal restraint on alienation. We adhere to what we said on this point in *Mays v. Burgess*, 79 U. S. App. D. C. 343 at 345. Although that case involved a restriction which was to be in effect for a designated length of time, 21 years only, and the instant covenant involves a perpetual restriction, we adopt what we said there as applying here. We note that there is a decided division in authority as to the validity and enforceability of such a perpetual restriction.<sup>3</sup> We further note that in some jurisdictions the validity of the restrictive covenant or agreement turns on a distinction in terminology between restrictions as to ownership and restrictions as to use and occupation.<sup>4</sup> Such restrictions as to use and occupancy are generally held valid and enforceable in equity, even in those jurisdictions holding restrictions on ownership invalid as restraints on alienation.<sup>5</sup>

However, in this jurisdiction the validity and enforceability of the covenant or agreement does not turn on such a distinction and we have no conflict in our decisions, which have, for over 25 years, uniformly upheld the validity of these restrictive conditions, whether by deed covenant or agreement between property owners, whether for

<sup>3</sup> 162 A. L. R. 180, supplementing annotations in 114 A. L. R. 1237, 66 A. L. R. 531 and 9 A. L. R. 120; 5 *Tiffany Real Property* (Third Edition) Sec. 1345.

<sup>4</sup> 162 A. L. R. 180.

<sup>5</sup> *Burkhardt v. Lofton*, (Cal.) 146 P. (2d) 720; *Fairchild v. Raines*, (Cal.) 151 P. (2d) 200; *Stone v. Jones*, (Cal.) 152 P. (2d) 19.

a designated length of time or perpetual, and whether against alienation, use and occupancy or both.<sup>6</sup> We observe that in other jurisdictions the majority of recent decisions are in accord with our holding.<sup>7</sup> See also The American Law Institute's Restatement of The Law of Property, dealing with Perpetuities and other Social Restrictions, Sec. 406, Comments l and o.

*Affirmed.*

EDGERTON, J., *dissenting*. The court holds that perpetual deed covenants forbidding sale of homes to Negroes are valid and enforceable by injunctions cancelling sales, evicting Negroes from homes that they have bought, and preventing sales to other Negroes. I think this erroneous for five reasons, each independent of the other, four. The covenants are void as unreasonable restraints on alienation. They are void because contrary to public policy. Their enforcement by injunction is inequitable. Their enforcement by injunction violates the due process clause of the Fifth Amendment. Their enforcement by injunction violates the Civil Rights Act which requires that "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." R. S. §1978, 8 U. S. C. § 42.

Despite the great importance of the questions whether racial restrictive covenants are valid and whether they are enforceable by injunction, the Supreme Court has never ruled on either.<sup>1</sup> The opposite is often assumed. In this court's recent case of *Mays v. Burgess*<sup>2</sup> both the principal opinion and the concurring opinion appear to reflect a belief that the issues then and now before this court have been decided by the Supreme Court. The court now relies on that case among others.

The erroneous impression that the Supreme Court has ruled on these questions results from misinterpretation of *Corrigan v. Buckley*, 271 U. S. 323 (1926). In that case a bill was filed in the trial court of the District of Columbia to enforce a racial restrictive covenant by injunction. The defendants move to dismiss the bill on the sole ground that the "covenant is void" because in conflict with the Constitution and the laws of the United States and with public policy. The trial court overruled the motions and granted the injunction, and this court affirmed.<sup>3</sup> This court ruled only that the covenant was

<sup>6</sup> See cases cited from this jurisdiction, *supra*.

<sup>7</sup> *Dooley v. Savannah Bank & Trust Co.*, (Ga.) 34 S. E. (2d) 522 (perpetual); *Lion's Head Lake v. Brzezinski*, (N. J.) 43 A. (2d) 729 (perpetual); *Lyons v. Wallen*, (Okla.) 133 P. (2d) 555 (99 years); *Steward v. Cronan*, (Colo.) 98 P. (2d) 999 (designated length of time); *Thorpe v. Herdt*, (Mo.) 130 S. W. (2d) 175 (20 years); *Vernon v. R. J. Reynolds Realty Co.*, (N. C.) 35 S. E. (2d) 710 (50 years).

<sup>1</sup> The few state courts that have passed on the questions are divided. Cases are collected in McGovney, *Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional*, 33 CALIF. L. REV. 5, 10 (1945).

<sup>2</sup> 79 U. S. App. D. C. 343, 147 F. 2d 899; certiorari denied, two Justices dissenting, 325 U. S. 868, rehearing denied, 325 U. S. 896.

<sup>3</sup> 55 App. D. C. 30, 299 Fed. 999 (1934).

not unconstitutional or contrary to public policy or void. The pleadings presented no other issue.

*Corrigan v. Buckley* reached the Supreme Court on appeal and not on certiorari. Section 250 of the Judicial Code as it read on the critical date authorized appeals in six sorts of cases, including (Third) "cases involving the construction or application of the Constitution of the United States . . ." and (Sixth) "cases in which the construction of any law of the United States is drawn in question by the defendant."<sup>4</sup> The defendants based their appeal solely on the contention that the covenant was "void" because it violated the Fifth, Thirteenth and Fourteenth Amendments of the Constitution and also the Civil Rights Act, §§ 1977, 1978 and 1979 of the Revised Statutes. The Supreme Court held that since the Fifth and Fourteenth Amendments dealt only with government action and not with action of private persons, and the Thirteenth only with involuntary servitude, the contention that these amendments made the *covenant void* raised no substantial question.<sup>5</sup> One of the sections of the Civil Rights Act on which the appellants relied, R. S. § 1978, provides that all citizens shall have the same right as white citizens to purchase and hold property. The Court decided that the several sections, "like the Constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property. There is no color for the contention that they rendered the indenture void . . . We therefore conclude that neither the constitutional nor statutory questions relied on as grounds for the appeal to this Court have any substantial quality or color of merit, or afford any jurisdictional basis for the appeal."<sup>6</sup> For want of jurisdiction, therefore, and without at all implying that the appealed judgment was right, the Court dismissed the appeal. Since it had no jurisdiction it could decide no question that was not involved in reaching that conclusion. Accordingly it decided nothing with regard to racial restrictive covenants except that *the Constitution and the Civil Rights Act* plainly do not make them void.<sup>7</sup>

No contention that either the Constitution or the Civil Rights Act prohibited *enforcement by injunction* of such covenants was raised by any pleading in any court, or was considered by the District Court, or was considered by this court. Despite that fact, by brief and argument the appellants undertook to raise in the Supreme Court the contention that "*the decrees of the courts below constitute a violation of the Fifth and Fourteenth Amendments to the Constitution, in that they deprive the appellants of their liberty and property without due process of law.*"<sup>8</sup> The Court pointed out that since this contention was not raised by the pleadings it could not give the Court jurisdiction of the appeal, and then added, without a word of argu-

<sup>4</sup> 36 Stat. 1159.

<sup>5</sup> "It is obvious that none of these Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their property; and there is no color whatever for the contention that they rendered the indenture void." 271 U. S. 323, 330.

<sup>6</sup> 271 U. S. 323, 331.

<sup>7</sup> In my dissent in the *Mays* case, 79 U. S. App. D. C. 343, 349, par. (4), I mistakenly attributed greater breadth to the *Corrigan* decision.

<sup>8</sup> 271 U. S. 323, 334; italics supplied.

ment, six words of dictum adverse to the contention itself: "it likewise is lacking in substance."<sup>9</sup>

The difference between the only point decided by the Supreme Court—that the Constitution and the Civil Rights Act plainly do not make a racial restrictive covenant void—and our own court's proposition that such a covenant is both valid and enforceable by injunction, is very great. Since the Supreme Court had no jurisdiction it could not decide even whether the covenant is void or valid, but necessarily left open the questions (1) whether it is "void because contrary to public policy"<sup>10</sup> and (2) whether it is void as an unreasonable restraint on alienation. Regardless of whether damages can or cannot be recovered for its breach, its specific enforcement by injunction, which much more directly and effectively prevents Negroes from buying and using the property, may be forbidden either (3) by the Constitution, (4) by the Civil Rights Act, or (5) by principles of equity. The Supreme Court did not and could not decide any of these questions in *Corrigan v. Buckley*. Its dictum touched only the third of these questions.

Aside from that dictum and the narrow point on which the Supreme Court actually ruled, this court's present decision that racial restrictive covenants are valid and enforceable by injunction rests only on our own past decisions to like effect. In my opinion those decisions, which were reached without full consideration of the questions involved, are erroneous and should be overruled. I think all five of the questions enumerated in the preceding paragraph must be answered in appellants' favor. If any one of them is so answered the appealed judgments must be reversed.<sup>11</sup>

The fifth question requires little discussion. It is enough to point out that the familiar principle of "balancing equities" precludes any

<sup>9</sup>"And while it was further urged in this Court that the decrees of the courts below in themselves deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the Code provision, it was not raised by the petition for the appeal or by any assignment of error, either in the Court of Appeals or in this Court; and it likewise is lacking in substance." 271 U. S. 323, 331.

<sup>10</sup>The Court pointed out that since it had no jurisdiction of the appeal it could not rule upon the contention that the covenant "is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant." *Ibid.* p. 332.

<sup>11</sup>In addition to these five general grounds for reversal there are at least two special grounds. (1) The covenants were intended to increase the value of the restricted property and to maintain a white neighborhood. The record shows that Negroes will pay much more than whites for the property and that the neighborhood is no longer white. Enforcement of the covenants defeats their economic purpose and does not accomplish their other purpose. The rule of *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. 2d 23, therefore applies. (2) The injunctions are broader than the covenants. The covenants are that the lots "shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person..." There is no covenant against use or occupation. The injunctions not only set aside transfers but also order the colored appellants to "remove themselves and all of their personal belongings from the land." A covenant against rental, lease, sale, etc., is an entirely different thing from a covenant against use and occupation. This court has recently approved practically the same distinction which it now ignores. *Gospel Spreading Ass'n v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878.

injunction in this case because, in view of the present housing situation, the extreme hardship which injunctions will inflict upon the appellants greatly outweighs any benefits which the appellees may possibly derive from them; and that "especially courts of equity; may appropriately withhold their aid where the plaintiff is using the right asserted contrary to the public interest."<sup>12</sup> I discuss the other four questions in the following order: I, the Constitution; II, the Civil Rights Act; III, restraint on alienation; IV, public policy.

I. *The Constitution.* In *Buchanan v. Warley*, 245 U. S. 60 (1917), the Supreme Court held that enforcement of a Louisville ordinance which forbade Negroes to move into predominantly white city blocks and whites to move into predominantly Negro city blocks would violate the Constitution and also, apparently, the Civil Rights Act.<sup>13</sup> The Court said: "The concrete question here is: May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the States, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?" (p. 75) "Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color . . . These enactments did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color . . . The Fourteenth Amendment and these statutes enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color." (pp. 78, 79) "We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law." (p. 82) The Court held that the ordinance invaded even the rights of a white vendor, who could therefore avoid it and enforce performance of a colored purchaser's contract.

But "so far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose."<sup>14</sup> Specifically, ordinances that limit what may be done with property in a given area are constitutional and enforceable unless they "are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."<sup>15</sup> So, as the Court held in the *Euclid* case, a city may exclude businesses and even apartment houses from a residential area merely because the city thinks it best to segregate them elsewhere. In the light

<sup>12</sup> *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U. S. 488, 492.

<sup>13</sup> R. S. § 1977, 1978. § 1978, which assures to all citizens the same right as white citizens to purchase and hold property, is discussed in part II of this opinion.

<sup>14</sup> *Nebbia v. New York*, 291 U. S. 502, 537. *Reits v. Mealey*, 314 U. S. 33, 36; *Prince v. Massachusetts*, 321 U. S. 158, 169.

<sup>15</sup> *Euclid v. Ambler Realty Co.*, 272 U. S. 385, 395. *Nectow v. Cambridge*, 277 U. S. 183, 187.

of the *Euclid* case, therefore, *Buchanan v. Warley* determines among other things that it is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare, to prevent property in a white neighborhood from being transferred to and used by Negroes.

The upshot is that Negroes have a constitutional right to buy and use, and whites to sell to Negroes, whatever real property they can without direct government interference based on race.

Such interference is forbidden even when it accords with the wishes of the inhabitants of a neighborhood as well as the act of a legislature. A New Orleans ordinance forbade Negroes to establish residence in a white community and whites to establish residence in a Negro community (as defined), "except on the written consent of a majority of the persons of the opposite race inhabiting such community." On the authority of the *Buchanan* case the Supreme Court held this ordinance void.<sup>16</sup> If an ordinance forbade Negroes to buy a house in a white community against the written dissent of a former owner of the house and a present owner of a neighboring house, obviously the ordinance and any injunction based upon it would be unconstitutional. The present question is whether an injunction which does the same thing without the support of an ordinance is constitutional.

The specific rule, adjudged by the Supreme Court in the *Buchanan* and *Harmon* cases, that it is arbitrary to exclude a race from a neighborhood is an instance of the general rule that "discriminations based on race alone are obviously irrelevant and invidious."<sup>17</sup> It has been contended that enforcement of covenants which exclude a race from a neighborhood does not involve discrimination because it permits reciprocity. This amounts to saying that if Negroes are excluded from decent housing they may retaliate by excluding whites from slums. Such reciprocity is not merely imaginary and unequal but irrelevant. Because appellants<sup>18</sup> are Negroes the court deprives them of homes which they could keep if they were white. Discrimination against them because of color is not merely relative but absolute. The imagined possibility that others may suffer similar discrimination because they are white is as irrelevant as the certainty that others will suffer it because they are Negroes. Both the Louisville ordinance and the New Orleans ordinance which excluded Negroes from white neighborhoods also excluded whites from Negro neighborhoods. Since they undertook to discriminate because of race against members of both races they had a formal reciprocity that restrictive covenants lack. This did not reconcile their enforcement with the requirements of due process.

Restrictive covenants are not self-executing. This case arises because persons whom they purport to bind have violated them. The white appellants have sold restricted property to the colored appellees. The appellees, neighbors not directly involved in the sales, seek to set them aside. For that purpose they necessarily invoke the aid of a court of equity. If all persons whom the covenants purport to bind had refused to sell to Negroes, no government action would be

<sup>16</sup> *Harmon v. Tyler*, 273 U. S. 668, reversing *Tyler v. Harmon*, 160 La. 943, 107 So. 704. Cf. 158 La. 439, 104 So. 200.

<sup>17</sup> *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192, 203.

<sup>18</sup> Though white grantors as well as colored grantees have appealed, throughout this opinion the unqualified word appellants refers only to the colored appellants.

involved but only the action of private individuals, and no question of due process of law would arise. The situation then would be comparable to the refusal of the innkeeper in the *Civil Rights Cases*<sup>19</sup> to serve Negroes. Even if some landowners had persuaded or hired others not to sell to Negroes, or Negroes not to buy, there would still be only private action, whether legal or illegal, and no due process question. But in this case private means have failed to produce compliance with the covenant and a court has been asked to enforce it. If the colored appellants refuse to vacate the premises in obedience to the court's decree it will be enforced against them through the court's power to punish for contempt; they may be imprisoned or fined, and dispossessed by force if necessary. The action that begins with the decree and ends with its enforcement is obviously direct government action. As this court said in *Corrigan v. Buckley*, no Negro has "the constitutional power to compel sale and conveyance to him of any particular private property." But no such question was before the court then or is before it now. Appellants claim no constitutional power to compel sale and conveyance of any property. The question is whether a court of the United States has the constitutional power to cancel deeds which willing sellers have made to willing buyers, and evict the buyers from the property, because the buyers are Negroes.

Since courts are arms of government they are subject, like legislatures and executive officers, to the restrictions that the Constitution imposes on government. Every case that holds legislation unconstitutional holds in terms or in effect that its judicial enforcement would be unconstitutional. The Constitution does not exempt any kind of judicial action from the requirements of due process of law. Not only legislation and procedure but judicially adopted rules of substantive law, including equity, are invalid when they conflict with these requirements.<sup>20</sup> Rules which the due process clause forbids legislatures to enact it forbids courts to adopt, for substantive due process is not a matter of method. A judicial decree which would be invalid if it had legislative sanction is not validated by lack of legislative sanction. Since racial restrictions on transfer and use of property are "clearly arbitrary and unreasonable" and do not promote the general welfare, the Constitution forbids courts to enforce such restrictions even when a legislature, for supposed public purposes, has attempted to impose them. Such restrictions are not less arbitrary and unreasonable, and not more conducive to the general welfare, when private persons acting without legislative sanction have attempted to impose them for private purposes. It follows that the Constitution forbids courts to enforce such restrictions in the second case, which is this case, as clearly as in the first, which is *Buchanan v. Warley*. It is strangely inconsistent to hold as this court does that although no legislature can authorize a court, even for a moment, to prevent Negroes from acquiring and using particular

<sup>19</sup> 109 U. S. 3. In those cases the Court expressly distinguished "action of State officers executive or judicial" (p. 11); also action of individuals supported by "State authority in the shape of laws, customs, or judicial or executive proceedings" (p. 17).

<sup>20</sup> *Ex parte Virginia*, 100 U. S. 339; *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673, 678-680; *Powell v. Alabama*, 287 U. S. 45; *Cantwell v. Connecticut*, 310 U. S. 296, 307-311; *A. F. of L. v. Swing*, 312 U. S. 321; *Bridges v. California*, 314 U. S. 232; *Bakery Drivers Local v. Wohl*, 315 U. S. 769; *Pennkamp v. Florida*, 328 U. S. 331. Cf. *McGowrey, op. cit. supra* note 1.

property, a mere owner of property at a given moment can authorize a court to do so for all time. Either the due process clauses of the Constitution do not forbid governments to prevent Negroes from acquiring and using particular property, in which case they do not forbid courts to enforce racial restrictions which statutes have imposed; or these clauses do forbid governments to prevent Negroes from acquiring and using particular property, in which case they forbid courts to enforce racial restrictions which covenants have imposed. *Buchanan v. Warley* rules out the first alternative.

As Judge Ross, the donor of the American Bar Association's Ross Essay Prize, said long ago in refusing to enforce by injunction a covenant against transfers to Chinese: "It would be a very narrow construction of the constitutional amendment in question and of the decisions based upon it . . . to hold that, while state and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the state may lawfully do so by contract, which the courts may enforce . . . The courts should no more enforce the one than the other."<sup>21</sup>

All this is said with complete deference to the rule of the *Corrigan* case that the Constitution does not make racial covenants void.<sup>22</sup>

II. *The Civil Rights Act.* White citizens have, beyond question, the right to purchase the property in suit from willing sellers and to hold it. This court forbids colored citizens to do so. It thereby rules that they have no right to do so. The court does not say, and it would be a contradiction in terms to say, "Despite the fact that we forbid colored citizens to purchase and hold this property they have a right to do so." I see no possible escape from the fact that the court's ruling violates not only the due process clause of the Fifth Amendment but also the Civil Rights Act, § 42 of Title 8 of the United States Code, which expressly provides that "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."<sup>23</sup> A statute which declares or confers a right means, if it means anything, that courts shall recognize and protect the right. Since (1) appellants are citizens of the United States, (2) the Act assures all citizens the same right as white citizens to purchase and hold property, and (3) white citizens have the right to purchase and hold the property in suit, the Act requires the courts to recognize and protect the very right which this court denies and destroys.

<sup>21</sup> *Gandolfo v. Hartman*, 40 Fed. 181, 182, 16 L. R. A. 377-378 (C. C., S. D. Calif., 1892).

<sup>22</sup> To say that the Constitution forbids direct and actual enforcement of a racial covenant by injunction—the only remedy which is intended to and necessarily does prevent Negroes from acquiring and using the restricted property—is not to say that it forbids awarding to a neighboring property owner such damages, if any, as an executed sale to a Negro may be shown to have caused.

<sup>23</sup> R. S. § 1978. The words are taken without material change from the Civil Rights Act of April 9, 1866, 14 Stat. 27, § 1.

Obviously the District of Columbia is within the meaning of the term "every State and Territory" as used in this statute. Cf. *Talbott v. Silver Bow County*, 139 U. S. 438, 444; *Geofroy v. Riggs*, 133 U. S. 258. And since Congress has the power of a state legislature in the District of Columbia the statute is plainly valid there.

Nothing is alleged or found against appellants except their color. Since the injunctions are based on covenants alone and the covenants are based on color alone, ultimately the injunctions are based on color alone. Even if they were based on color in combination with other factors they would still violate the Act. The Act prohibits injunctions which depend in any degree upon the fact that the persons enjoined are colored, for any restriction which is imposed upon the right of colored citizens to purchase and hold property and would not be imposed upon the right of white citizens to purchase and hold the same property. It denies to colored citizens "the same right . . . as is enjoyed by white citizens."

It makes no difference that the court denies the right of Negroes to purchase and hold certain property only and not all the property in the District of Columbia. Much of the land in the District is covered by covenants like those in suit. Though these injunctions refer only to appellants' land, denying the right of appellants and other Negroes to buy this land has the practical effect of denying the right of any Negro to buy any land covered by any such covenant. Moreover, the conflict between the Act and the injunctions does not depend upon the fact that the injunctions have a general effect. If a municipal legislature were to pass an ordinance forbidding Negroes to purchase and hold precisely the land in suit, and no other, obviously the court could not prevent them from purchasing and holding it, since such prevention would violate the Act of Congress. I think it quite as plain that the court violates the Act of Congress when, without even the excuse of municipal legislation, it prevents Negroes from purchasing and holding this property. The expressed will of a former property-owner cannot authorize the court to deny a right which the expressed will of a legislature could not authorize it to deny.

Any opinion as to the reasonableness or desirability of preventing Negroes from purchasing and holding this property is irrelevant to the present point. The Constitution and the Civil Rights Act have foreclosed the matter. The right to buy and use anything that whites may buy and use is conferred upon Negroes implicitly by the due process clauses of the Fifth and Fourteenth Amendments and explicitly by the Civil Rights Act. Of the civil rights so conferred, none is clearer and few are more vital than the right to buy a home and live in it.

The *Corrigan* case holds that the Civil Rights Act does not make racial covenants void, but the Supreme Court has never held that the Act does not forbid affirmative governmental denial and destruction of the right of Negroes to acquire property. The *Buchanan* case holds the contrary.

III. *Restraint on Alienation.* "The underlying principle which operates throughout the field of property law is that freedom to alienate property interests which one may own is essential to the welfare of society. [This assumption rests] in part upon the necessity of maintaining a society controlled primarily by its living members, in part upon the social desirability of facilitating the utilization of wealth, and in part upon the social desirability of keeping property responsive to the current exigencies of its current beneficial owners. Restraints on alienation are from their very nature inconsistent with the policy of freedom of alienation. Thus, to uphold them, justification must be found in the objective that is thereby sought to

be accomplished or on the ground that the interference with alienation in the particular case is so negligible that the major policies furthered by freedom of alienation are not materially hampered."<sup>24</sup> Elaborating this analysis the American Law Institute lists six factors which tend, when present, to make restraints on alienation reasonable and valid: "1. the one imposing the restraint has some interest in land which he is seeking to protect by the enforcement of the restraint; 2. the restraint is limited in duration; 3. the enforcement of the restraint accomplishes a worthwhile purpose; 4. the type of conveyances prohibited are ones not likely to be employed to any substantial degree by the one restrained; 5. the number of persons to whom alienation is prohibited is small . . . ; 6. the one upon whom the restraint is imposed is a charity."<sup>25</sup>

By these accepted standards, the covenants in suit are clearly unreasonable and void considered merely as restraints on the freedom of owners to alienate their property.<sup>26</sup> Of the six favorable factors which the Institute enumerates, (1) only, if any, is present here. (2). The restraint is perpetual. (3). Enforcement of the restraint in this case does not accomplish its purpose of maintaining a white neighborhood and defeats its purpose of increasing the value of the property. Moreover a purpose which, as *Buchanan v. Warley*<sup>27</sup> holds, legislatures are constitutionally forbidden to accomplish, cannot be considered a "worthwhile" purpose. Part IV of this opinion is devoted to showing that instead of being worthwhile these covenants do great harm. (4). The "type of conveyances prohibited" would be much "employed . . . by the one[s] restrained," for the record shows that the restricted property can be sold to Negroes for much more than whites will pay for it. (5). "The number of persons to whom alienation is prohibited" is enormous. Such persons are more than a quarter of the population of the District of Columbia. In respect to the number of possible purchasers as well as the price which some of them are ready to pay, the local owners' market is most severely as well as permanently impaired. No other sort of restraint of any comparable degree of severity has ever been upheld.

IV. *Public Policy.* Racial restrictive covenants have been defended on two grounds. They are said to increase the value, i.e. the price, of the restricted property, and to prevent racial conflict. If the first proposition is true,<sup>28</sup> which is very doubtful in the District of Columbia,<sup>29</sup> it is no defense of these covenants from the point of view of public policy, but quite the contrary, since the prices of homes are inflated above any level that can be thought socially desirable. The second proposition assumes that racial conflict is likely to result when

<sup>24</sup> Am. Law Inst., *RESTATEMENT OF THE LAW OF PROPERTY* (1944) pp. 2379-80.

<sup>25</sup> *Op. cit.* § 406, Comment i.

<sup>26</sup> Quite inconsistently the Institute, in § 406, Comment l, qualifiedly endorses such covenants.

<sup>27</sup> 245 U. S. 60; cf. *Euclid v. Ambler Realty Co.*, *supra* note 15.

<sup>28</sup> Myrdal's general conclusion on this question is that since there is usually a (white) movement out of a neighborhood when Negroes begin to move in, prices usually drop at first, but that they "rise again at least to the level justified by the aging and lack of improvement of the buildings." *Op. cit.*, *infra* note 36, p. 623. *Cf.* note 35.

<sup>29</sup> Both in this case and in the *Mays* case, 79 U. S. App. D. C. 343, 348, 147 F. 2d 869 (dissenting opinion), the record shows that the restricted property can be sold to Negroes for much more than whites will pay for it. There is no reason to suppose that this is not typical of the local situation.

whites and Negroes live near each other. Familiar facts refute this assumption. In unrestricted areas within the economic reach of Negroes, and particularly along the boundaries between restricted and unrestricted areas, whites and Negroes do live near each other and racial conflict does not result. Serious students of the subject believe that enforced housing segregation increases rather than diminishes the possibility of racial conflict.<sup>30</sup> If the satisfaction which many of the whites in restricted areas may derive from excluding Negroes is to be given weight, it must be weighed against the dissatisfaction which Negroes may feel at being excluded.

Any contention that public welfare is on the whole promoted by preventing Negroes from buying homes in white neighborhoods is refuted as a matter of law by *Buchanan v. Warley*.<sup>31</sup> If it were not "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare"<sup>32</sup> to prevent Negroes from buying homes in white neighborhoods, legislation directed to that end would be due process of law. *Buchanan v. Warley* determines that it is not due process of law. Since racial restrictive covenants are directed to the same end, it follows that they also do not promote the general welfare. *Buchanan v. Warley* does not exclude the theoretical possibility that these covenants might be merely neutral in relation to the general welfare. But the fact is that they do great and varied harm, are therefore clearly contrary to public policy, and should be held void for that reason. Moreover the Civil Rights Act discussed in part II of this opinion would be, if it were nothing more, a declaration by Congress that the public policy of the United States forbids preventing Negroes from buying homes because they are Negroes.

The housing shortage in the District of Columbia has long been acute. The shortage of decent housing, or any housing, for Negroes is particularly acute. They are largely confined to wretched quarters in overcrowded ghettos. These facts are commonly known and undisputed.<sup>33</sup> The correlation of bad and overcrowded housing with delinquency, disease and death has often been proved. The Negro death rate from tuberculosis in the District of Columbia is 4½ times

<sup>30</sup> "Chicago [where segregation prevails] has been an area of racial tension for the past few years and it is generally admitted that there can be no permanent easement of this tension until something fundamental is done about the housing of Negroes in the city." Robert C. Weaver, *Race Restrictive Housing Covenants*, 20 JOURNAL OF LAND AND PUBLIC UTILITY ECONOMICS 183, 187 (1944). Cf. *Negro Housing* (1932), quoted *infra* at note 37.

<sup>31</sup> *Supra* 245 U. S. 60.

<sup>32</sup> *Euclid v. Ambler Realty Co.*, *supra* note 15.

<sup>33</sup> Cf. note 15 of the dissenting opinion in *Mays v. Burgess*, 79 U. S. App. D. C. 343, 350 (1945).

Even in the middle thirties, before the acute housing emergency arose, the National Capital Housing Authority estimated that 14,000 Negro families out of 30,253 were "living under indecent, unsafe and insanitary conditions." Report of the National Capital Housing Authority for the Ten-Year Period 1934-1944, pp. 157, 167.

Between July and November 1946 the Bureau of the Census made a "sample survey" which showed that the "gross vacancy rate" for privately financed dwellings in the metropolitan area was 1.0 percent in white neighborhoods and 0.4 percent in Negro neighborhoods, and that only "three-fourths of the private vacancies in the area were habitable; of these, only one-sixth were being offered for rent or sale.... Approximately one-fourth of the married white World War II veterans and seven-tenths of the married Negro veterans in the Washington area were doubling up with relatives or friends or were living in rented

the white, the Negro maternity death rate 5 times the white, and the Negro death rate from all causes 40 percent higher than the white.<sup>34</sup> Though these differences are not due entirely to the inferiority of Negro housing no one questions the fact that they are due partly to that cause.

The inferiority of Negro housing is not due entirely to racial covenants, but no one questions the fact that it is due in part to racial covenants. Covenants prevent free competition for a short supply of housing and curtail the supply available to Negroes. They add an artificial and special scarcity to a general scarcity, particularly where the number and purchasing power of Negroes as well as whites have increased as they have recently in the District of Columbia. The effect is qualitative as well as quantitative. Exclusion from decent housing confines Negroes to slums to an even greater extent than their poverty makes necessary. Covenants exclude Negroes from a large fraction—no one knows just how large—of the decent housing in the District of Columbia. Some of it is within the economic reach of some of them. Because it is beyond their legal reach, relatively well-to-do Negroes are compelled to compete for inferior housing in unrestricted areas, and so on down the economic scale. That enforced housing segregation, in such circumstances, increases crowding, squalor, and prices<sup>35</sup> in the areas where Negroes are compelled to live is obvious. It results in "doubling up," scandalous housing conditions for Negroes, destroyed home life, mounting juvenile delinquency, and other indications of social pathology which are bound to have their contagious influence upon adjoining white areas."<sup>36</sup>

rooms, trailers, or tourist cabins... One-tenth of the married white veterans and two-tenths of the married Negro veterans lived in dwelling units which needed major repairs or lacked one or more standard plumbing facilities—running water, private flush toilet, and private bath." Bureau of the Census, "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C., Metropolitan District," Press Release of Feb. 4, 1947.

"Report of the Government of the District of Columbia for Year-ended June 30, 1946, pp. 115, 117.

"No statistical study has been made which shows unequivocally that Negroes pay higher rents for equivalent apartments but this seems to be the opinion of all those—including white real estate agents—who have looked into the matter." Myrdal, *op. cit. infra* note 36, p. 633. "Not only does there seem to be consensus on the matter among those who have studied the Negro housing problem, but there is also a good logical reason for it; housing segregation. Particularly when the Negro population is increasing in a city, it is hard to see how this factor can fail to make Negro rents increase to an even greater extent than would have been the case if the Negroes had been free to seek accommodations wherever in the city they could afford to pay the rent." *Ibid.* p. 379. Cf. note 29 *supra*.

"Gunnar Myrdal, *An American Dilemma. The Negro Problem and Modern Democracy* (1944), p. 636. In 1937 the Carnegie Corporation recognized the need, for use in allocating its own funds and also for general public use, of "a comprehensive study of the Negro in the United States, to be undertaken in a wholly objective and dispassionate way as a social phenomenon." p. ix.

"There was no lack of competent scholars in the United States who were deeply interested in the problem and had already devoted themselves to its study, but the whole question had been for nearly a hundred years so charged with emotion that it appeared wise to seek as the responsible head of the undertaking someone who could approach his task with a fresh mind, uninfluenced by traditional attitudes or by earlier conclusions, and it was therefore decided to 'import' a general director... The search ended in the selection of Dr. Gunnar Myrdal, a scholar who despite his youth had already achieved an international reputation as a social economist, a professor in the University of Stockholm, economic adviser to the Swedish Government, and a member of the Swedish Senate. Dr. Myrdal had a decade earlier spent a year in the United States as a Fellow

Neither the present nor any previous opinion of this court questions or considers these facts. The judgments appear to rest upon the theory that they are unimportant.

As long ago as 1932, when the situation was less acute, the Committee on Negro Housing of the President's Conference on Home Building and Home Ownership said in its Report: "Segregation . . . has kept the Negro-occupied sections of cities throughout the country fatally unwholesome places, a menace to the health, morals and general efficiency of cities, and 'plague spots for race exploitation, friction and riots.'" <sup>27</sup> Racial restrictive covenants "exist today in thousands of American communities." <sup>28</sup> Housing segregation may therefore be expected to continue in thousands of communities as long as courts continue to enforce racial restrictive covenants by injunctions. But "If the Court should follow up its action of declaring all local laws to segregate Negroes unconstitutional by declaring illegal also the private restrictive covenants, segregation in the North would be nearly doomed, and segregation in the South would be set back slightly." <sup>29</sup>

The Charter of the United Nations provides that "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race. . . ." and that "all Members pledge themselves to take joint

of the Spelman Fund, and when the invitation was extended to him by the Corporation in 1937, was about to make a second visit at the invitation of Harvard University to deliver the Godkin Lectures. It was understood that he should be free to appoint and organize a staff of his own selection in the United States and that he should draw upon the experience of other scholars and experts in less formal fashion, but that the report as finally drawn up and presented to the public should represent and portray his own decisions." Foreword by F. P. Keppel, then President of the Carnegie Corporation, pp. vi, vii. Dr. Myrdal and a large group of American experts in various fields devoted years of investigation and research to the undertaking which culminated in Dr. Myrdal's 1500-page book.

"*Negro Housing* (1932), pp. 45, 46.

"The racial differential in housing accommodations for all income groups combined is enormous. . . . In Detroit 34 per cent of the Negro-occupied dwelling units were considered to be either unfit for use or in need of major repairs; the same proportion for white-occupied dwelling units was 6 per cent. The corresponding figures for Harrisburg, Pennsylvania, were 73 and 14 per cent, respectively. For Norfolk, Virginia, they were 25 and 5 per cent; for Savannah, Georgia, 55 and 11 per cent. . . . The differential is quite considerable in almost every place where there is an appreciable Negro population." Myrdal, *op. cit.* *supra* note 36, p. 378.

"While less than eight per cent of the dwelling units occupied by urban whites were overcrowded, almost 25 per cent of the units occupied by urban Negroes were overcrowded. . . . Congestion in Negro neighborhoods has reached a new high, and it is extracting unheard of economic and social costs. The situation has led to greater frustration of the hemmed-in inhabitants since a large number of them have, for the first time, enough money to pay for decent shelter. Residential segregation prevents them from getting it on equal terms with other Americans and looms as a permanent impediment for most of them." Robert C. Weaver, *Housing in a Democracy*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, March 1946, pp. 95-96.

"Robert E. Cushman, *The Laws of the Land*, 36 SURVEY GRAPHIC 14, 17, (1947).

"The restrictive covenant . . . has been popular, especially in the North. The exact extent of the use of the restrictive covenant has not been ascertained, but: 'in Chicago, it has been estimated that 80 per cent of the city is covered by such agreements . . .'" Myrdal, *op. cit.* *supra* note 36, p. 624.

"Myrdal, *op. cit.* *supra* note 36, p. 624.

and separate action" for that purpose.<sup>40</sup> In ruling that racial covenants are contrary to current public policy, a Canadian court relies in part on Canada's adherence to this Charter.<sup>41</sup> America's adherence to this Charter, the adherence of other countries to it, and our American desire for international good will and cooperation cannot be neglected in any consideration of the public policy of preventing men from buying homes because they are Negroes. In many countries the color of a man's skin is little more important than the color of his hair and in many others the favored color is not white. In western Europe, to say nothing of other parts of the world, the position of Negroes in America is widely advertised and widely resented. "Any and all concessions to Negro rights in this phase of the history of the world will repay the nation many times, while any and all injustices inflicted upon him will be extremely costly."<sup>42</sup> General Eisenhower has said that "enlightened self-interest demands the elimination of the unfair practices against large segments of mankind which, in the past, have so blackened the history of humanity."<sup>43</sup> The President of the United States has said: "We are living in a time of profound and swiftly moving change. We see colonial peoples moving toward their independence. It is a process that we, as Americans, can understand and sympathize with, since it parallels our own struggle for independence. We, as Americans, will want to supply guidance and help wherever we can. One way in which we can help is to set an example of a nation in which people of different backgrounds and different origins work peacefully and successfully alongside one another. . . . More and more we are learning, and in no small measure through the medium of the press, how closely our democracy is under observation. We are learning what loud echoes both our successes and our failures have in every corner of the world. That is one of the pressing reasons why we cannot afford failures. When we fail to live together in peace, the failure touches not us, as Americans, alone, but the cause of democracy itself. That we must never forget."<sup>44</sup>

Suits like these, and the ghetto system they enforce, are among our conspicuous failures to live together in peace. In another such suit, this court recently argued that "if ever the two races are to meet upon mutually satisfactory ground, it cannot be through legal coercion. . . ."<sup>45</sup> This premise, instead of supporting the court's conclusion that racial restrictive covenants should be enforced by injunctions, is one more argument against it. The question in these cases is not whether law should punish racial discrimination, or even whether law should try to prevent racial discrimination, or whether law should interfere with it in any way. The question is whether law should affirmatively support and enforce racial discrimination. Appellants do not ask that appellees be forced to sell their houses. Appellees alone have come into court with a claim. They ask the court to take away appellants' homes by force because they are Negroes. There is no other issue in the case.

<sup>40</sup> Articles 55c, 56.

<sup>41</sup> *Re Drummond Wrens* [1945] 4 D.L.R. 674 (Ontario High Court).

<sup>42</sup> Myrdal, *op. cit. supra* note 36, p. 1015.

<sup>43</sup> *New York Times*, Feb. 24, 1947.

<sup>44</sup> Remarks of the President in making the Wendell Willkie Awards for Journalism; Press Release, Feb. 28, 1947.

<sup>45</sup> *Mays v. Burgess*, 79 U. S. App. D. C. 343, 347, 147 F. 2d 869.

[fol. 433]. [Stamp:] United States Court of Appeals for the District of Columbia. Filed May 26, 1947. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1947

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

April Term, 1947

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

Appeals from the District Court of the United States for the District of Columbia

Before Edgerton, Clark and Wilbur K. Miller, JJ.

JUDGMENT

These causes came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and were argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in these causes be, and the same is hereby, affirmed, with costs.

Per Mr. Justice Clark.

Dated May 26, 1947.

Dissenting opinion by Mr. Justice Edgerton.

[fol. 434] [Stamp:] United States Court of Appeals for  
the District of Columbia. Filed Jun. 10, 1947. Joseph W.  
Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA, JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URGIOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

Motion for Rehearing filed on behalf of James M. Hurd  
and Mary M. Hurd, No. 9196, and Robert H. Rowe and  
Isabella J. Rowe, Herbert B. Savage and Georgia N. Sav-  
age, Pauline B. Stewart, No. 9197.

Charles H. Houston, Spottswood W. Robinson, III,  
615 F Street, Northwest, Attorneys for Appel-  
lants-Movants.

[fol. 435]

MOTION FOR REHEARING

Appellants-movants James M. Hurd and Mary M. Hurd,  
No. 9196, and Robert H. Rowe and Isabella J. Rowe, Her-  
bert B. Savage and Georgia N. Savage, and Pauline B.  
Stewart, No. 9197, move the Court to set aside its judgment  
entered May 26, 1947, affirming the judgment of the Dis-  
trict Court of the United States for the District of Colum-  
bia in the above cases, granting an injunction against the  
use and occupation of their properties by appellants and  
voiding their deeds because of a perpetual race-hate re-  
strictive covenant:

"Subject also to the covenants that said lot shall  
never be rented, leased, sold, transferred or conveyed

unto any Negro or colored person, under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

and to grant a rehearing and reargument of said causes because the judgment of the Court and the majority opinion are erroneous in the following respects, among others to be pointed out in the reargument:

# I

*The judgment of the Court and the majority opinion misread and misinterpret the record in the case.*

Before reaching the question of any disputed legal point, movants first call attention of the Court to the fact the judgment of the Court and majority opinion misread the record in the following decisive points:

A.) In stating the factual situation is the same as in *Mays v. Burgess*, 79 U. S. App. 343, 147 F. 2d 869, cert. denied 325 U. S. 868, rehearing denied 325 U. S. 896.

B.) In ascribing to these movants appellant Urciolo's repudiation of the "change of neighborhood" argument.

# A

The Mays case involved property on First Street, Northwest (2213 First Street). The present cases involve properties on Bryant Street, Northwest, (Hurd, 116 Bryant Street; Rowe, 118 Bryant; Savage, 134 Bryant; Stewart, 150 Bryant). They do not face First Street, nor are they contiguous to First Street. They are separated by an alley from even the rear of the houses on First Street. This is not *Mays v. Burgess*; but cases even stronger than *Gospel Spreading Association v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878, where the property in question (101 "U" Street, Northwest) was corner property located both on First Street and U Street but fronting on U Street. The fact the *Gospel Spreading Association* case was a companion case to the Mays case, decided at the same time with [fol. 436] the Mays cases, lends added weight to the distinction.

All the testimony in the case establishes First Street as the dividing line between the white and Negro population. Even Henry K. Murphy, executive secretary of the white

Committee of Owners (Appdx. 70) admits that Mr. Murphy would have the white neighborhood bend a corner to the west and take in the twenty houses on Bryant Street (Appdx. 72); but let us repeat the facts from the record: West of First Street the neighborhood is solidly Negro; and this came about as a mass movement of the Negro population northward, until these twenty houses on Bryant Street are the last houses west of First Street for over a mile to the South occupied by non-Negroes. (See even the testimony of plaintiff Frederic E. Hodge, pp. 290, at 295-296, 298). The plat introduced in evidence shows no houses west of First Street, north after leaving Bryant; so that these twenty houses are a last drop before the area west of First Street takes on a solid dark hue.

Gospel Spreading Asso. v. Bennetts, *supra*. Making allowance then for Mr. Murphy's position, interest and bias, consider the testimony of experienced real estate men who know the neighborhood and who testify that First Street is the dividing line:

Edward L. Wills, pp. 259, at 266-267 (North Capitol Street, one street east of First Street, Northwest, the dividing line).

Thomas W. Parks, pp. 331, 333, 345.

The same testimony that First Street is the dividing line appears in the record of another case, docketed but never argued in this Court: Broadway v. Bishopp, No. 8232:

See there testimony over five years ago of the following real estate brokers: Patrick D. Holmes, (R. 150 at 151 and 160); Romeo W. Horad (R. 162 at 164-165); Thomas W. Parks (R. 168 at 171).

All the cases upholding restrictive covenants in this Court (except Corrigan v. Buckley, 55 App. D. C. 30) involve property on First Street, or east of First Street:

Torrey v. Wolf, 56 App. D. C. 4, 6 F. 2d 702;

Cornish v. O'Donoghue, 58 App. D. C. 359, 30 F. 2d 983;

Grady v. Garland, 67 App. D. C. 73, 89 F. 2d 817;

Mays v. Burgess, *supra*.

Except from the Gospel Spreading Association case, no case until the present cases were argued in this Court concerning the area west of First Street. The Negro migra-

tion was so irresistible that the Broadway case did not have [fol. 437] to be argued: the white owners abandoned their efforts to enforce the covenant.

Both *Hundley v. Gorewitz*, 77 App. D. C. 48, 132 F. 2d 23, and the Gospel Spreading Association case, *supra*, control these cases and require a reversal of the judgment below.

## B

This Court cannot ascribe the individual position of appellant Raphael G. Urciolo, appearing *pro se*, in repudiating the change of neighborhood doctrine to the movants here. True all appellants filed a joint brief and a joint appendix, to minimize the terrible burden of a printing bill of more than \$1,200.00; but the change of neighborhood doctrine was extensively argued for these movants both in the brief and before the Court. To brush their arguments cavalierly aside by stating that appellant Urciolo repudiated the change of neighborhood argument does as much violence to the record, as the statement that the same area is involved in these cases as in *Mays v. Burgess*.

## II

*As a matter of law these cases require a reversal of the judgment below on the change of neighborhood doctrine.*

Less than five years ago, this Court established<sup>1</sup> for this jurisdiction the doctrine that<sup>2</sup>

“ \* \* \* since the purpose of such restrictions is the mutual benefit of the burdened properties, when it is shown that the neighborhood in question has so changed in its character and environment and in the uses to which the property therein may be put that the purpose of the covenant cannot be carried out, or that its enforcement would substantially lessen the value of the property, or, in short, that injunctive relief would not give a benefit but rather impose a hardship, the rule will not be enforced.

<sup>1</sup> *Hundley v. Gorowitz*, 77 App. D. C. 48, 132 F. 2d 23 (1942).

<sup>2</sup> 77 App. D. C. at 49.

"This exception to the rule is applicable in the case of a covenant such as we have here when, in the natural growth of a city, property originally constructed for residential purposes is abandoned for homes of more modern construction in more desirable locations, for a serious decline in values would follow unless the way was open either for use of the property for business purposes or for the housing needs of a lower income class. And it is also applicable where removals are caused by constant penetration into white neighborhoods of colored persons. For in such cases to enforce the restriction would be to create an unnatural barrier to civic development and thereby establish a virtually uninhabitable section of the city. Whenever, therefore, it is shown that the purpose of the restriction has been frustrated and that the result of enforcing it is to depreciate rather than to enhance the value of the property concerned, a court of equity ought not to interfere."

In refusing to enforce a restriction identical in terms with [fol. 438] that involved in the instant case in a factual situation not decidedly different from that presented here, it was pointed out that<sup>3</sup>

"Furthermore, apart from the market value of the property; which as we have seen, is not the only test, the present appellees are not now enjoying the advantages which the covenant sought to confer. The obvious purpose was to keep the neighborhood white. But the strict enforcement of all five covenants will not alter the fact that the purpose has been essentially defeated by the presence of a Negro family now living in an unrestricted house in the midst of the restricted group, and as well by the ownership by another Negro of a house almost directly across the street. And this is just the beginning."

It is difficult to conceive of a situation more appropriate for the application of these principles than that presented by these cases. The pertinent facts demonstrated by the record are set forth and considered in appellants' brief<sup>4</sup>

<sup>3</sup>77 App. D. C. at 50.

<sup>4</sup>PP. 6-11, 80-81, 83-88.

and do not need reiteration here. It will suffice to make reference to the change of the neighborhood involved from a community of native American white homeowners to an interracial hotchpotch; the change of the surrounding area to a solid Negro community; the unmistakable trend and inevitable migration of Negroes toward and into the restricted properties; the fact that enforcement of the restriction cannot establish a white neighborhood long since gone; the uncontested evidence that while refusal to enforce the restriction would peg and even enhance the values of the properties, their utter ruin would be the sole consequence of its enforcement; the untold hardship and irreparable damage to the appellants resulting from the injunction. As Mr. Justice Edgerton pointed out:<sup>5</sup>

"The covenants were intended to increase the value of the restricted property and to maintain a white neighborhood. The record shows that Negroes will pay more than whites for the property and that the neighborhood is no longer white. Enforcement of the covenants defeats their economic purpose and does not accomplish their other purpose. The rule of *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. 2d 23, therefore applies."

Nor, it is submitted, is *Mayes v. Burgess*<sup>6</sup> controlling. In that case, there were no Negro occupants in the particular block in question, nor in the block adjacent thereto on the street in question in either direction, nor on the street in question for several blocks northwardly, and it was expressly found that the property in question was a part of a neighborhood, consisting of approximately one thousand homes, churches, and business properties exclusively occupied by whites. The situation here is entirely different.<sup>7</sup> The properties here in question are not, as the majority opinion assumes,<sup>8</sup> a part of the area involved in the *Mays* case. The 20 houses are the only houses left before the area west of First Street will be a solid Negro community. These houses are set off and separated from

<sup>5</sup> Slip opinion, p. 6, footnote 11.

<sup>6</sup> 79 App. D. C. 343, 147 F. 2d 869 (19—).

<sup>7</sup> See references, footnote —, supra.

<sup>8</sup> Slip opinion, pp. 2-3.

the First Street houses by an alley. They do not pertain to First Street but to the area west of First Street. In such circumstances, it would appear plain that the *Mays* case is distinguishable, and that the doctrine of the *Hundley* case is applicable.<sup>9</sup>

Further, the Court's opinion fails to consider to any extent whatsoever the fact that the record negatives the existence of any general neighborhood scheme of development or comprehensive building plan in the 100 block of Bryant Street which the restriction was designed to protect, (See testimony of plaintiffs Hodge (Appdx. 26-27, 291-292), the existence of an intention to benefit appellees' properties by the restriction imposed upon appellants' properties, and the fact of reliance by appellees upon the restriction.<sup>10</sup>

Notwithstanding the tremendous extension in modern law of the principles upon which the equitable enforcement of property restrictions rests, it is well settled that it was incumbent upon appellees to prove that the restriction upon appellants' properties was imposed with the intention of thereby benefiting appellees' properties,<sup>11</sup> and it is equally plain that the proof even failed to comply with standards requisite to a showing that appellees possessed the right to enforce the restriction in the first instance.<sup>12</sup>

In the state of the record in these cases, appellants' contentions in this regard cannot be disregarded unless the position of the Court be that enforcement is to follow automatically from the appearance of a segregation restriction upon property owned or occupied by Negroes, irrespective of the scope of its intended benefit and of the position of the plaintiffs. In this event, an unfortunate confusion in the land law in this jurisdiction arises from the contrary holding, of the District Court on the identical issue.<sup>13</sup>

<sup>9</sup> *Gospel Spreading Association v. Bennetts*, 79 App. D. C. 352, 147 F. 2d 878 (194—).

<sup>10</sup> Discussed in detail as Point V, Appellants' Brief, p. 64 *et seq.*

<sup>11</sup> Appellants' Brief, p. 64, *et seq.*

<sup>12</sup> Appellants' Brief, p. 70, *et seq.*

<sup>13</sup> *Herb v. Gerstein* (D. C., D. C.), 41 F. Supp. 674 (1941), discussed Appellants' Brief, p. 69 *et seq.*

## III

*The injunction issued in these cases are broader than the covenant itself and constitute on any basis not judicial enforcement of an existing covenant but judicial legislation in the teeth of Buchanan v. Warley.*

In this case, a judgment enjoining the vendee appellants [fol. 440] from doing something which the restriction leaves them free to do has been approved by the majority of this Court. In this brief, appellants called attention to the fact that only the ownership, but not the use or occupancy, of the properties in question by Negroes, was sought to be prohibited by the restriction involved, and that, therefore, the trial court erred in directing the Negro appellants to remove from their properties. As Mr. Justice Edgerton succinctly put it: <sup>14</sup>

"The injunctions are broader than the covenants. The covenants are that the lots 'shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person . . . .' There is no covenant against use or occupation. The injunction not only set aside transfers but also order the colored appellants to 'remove themselves and all of their personal belongings from the land.' A covenant against rental, lease, sale, etc., is an entirely different thing from a covenant against use and occupation. This court has recently approved practically the same distinction which it now ignores. *Gospel Spreading Ass'n v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878."

This involves something more than judicial misconstruction; it presents a serious constitutional question independent of others initially involved on this appeal. The right of these parties to occupy the properties in question is valuable property protected by the guaranties of due process of the Fifth and Fourteenth Amendments,<sup>15</sup> and the action of this Court in approving an injunction extending its prohibitions to acts entirely unprohibited by the proponents of the restriction is, in any view of the case, a taking of such

<sup>14</sup> Slip opinion, p. 6, footnote 11.

<sup>15</sup> See discussion, appellants' brief, pp. 54-55, 57-59.

property without due process of law, within the meaning of the constitutional provisions.

Suppose for the purpose of the argument, assumption is made that confining itself to the traditional judicial function of enforcement of existing covenants the Court be held empowered to enjoin the rental, lease, sale, transfer or conveyance of the properties to Negroes, the most the Court can do is to void the deeds in question and leave the Negroes on the properties as tenants by sufferance, or even trespassers. When it does more and orders them evicted, the Court becomes a self-constituted legislature creating rights and duties theretofore non-existent, unconstitutional and directly in the teeth of *Buchanan v. Warley*, 245 U. S. 60, 38 S. Ct. 16, 62 L. ed. 149.

#### IV

*Enforcement of these race-hate restrictive covenants is against the public policy of the United States.*

[fol. 441] Appellants do not elaborate on the discussion of this point in the dissenting opinion of Mr. Justice Edgerton. For anyone seriously concerned about the future welfare and international position of this country, the propositions set forth in that opinion would be convincing. The point is raised here in reargument because it will not down, because international events press us on to the day when internal race prejudice may be the rock upon which the good will of other peoples for this nation will be lost. If the majority justices could only sense the resentment of the diplomatic corps members who do not look like white to the prejudices and discriminations prevalent in this capital city of democracy, they would outlaw restrictive covenants, instead of piling up the legacy of hatred and oppression which they may escape but which their children and their children's children will have to pay, even as the blood drawn by the lash in slavery was paid for by blood shed in the holocaust of the Civil War.

#### V

Movants resubmit their brief and all points made in it in support of this motion.

Respectfully submitted, Charles H. Houston, Spottswood W. Robinson, III, attorneys for movants.

Service accepted: (S.) Henry Gilligan, attorney for appellees.

[fol. 442] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jun. 12, 1947. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

ANSWER OPPOSING REHEARING

Answering Paragraphs 1—A and B of the Motion

The majority opinion of the Court accurately and clearly covers the factual situation; the record was not in any particular misread or misinterpreted by the Court. In the Gospel Spreading Association v. Bennetts case, 70 U. S. App. D. C. 352, 147 F. 2d 878, the property in suit was 101 U Street, N. W.; the Court found it to be a U Street property, every other property on the block, with one exception, being owned and occupied by Negroes, including a Negro church at the corner of U and Second Streets.

The Motion misstates the evidence of Henry K. Murphy. In answer to the following question of Mr. Houston (P. 72, Record):

Q. First Street has usually been considered the dividing line between the white and the negro population, has it not?

Mr. Murphy answered: "Up as far as Bryant Street, and the white population extends on Bryant Street west from First Street about two-thirds of the distance to Second."

The real estate witnesses on this point, namely: Wills, Parks and Horad, are all Negroes.

[fol. 443] Paragraph II of the Motion is merely a restatement of the arguments presented to the Court on November 21, 1946.

Paragraph III of the Motion reiterates the contentions of Appellants' Brief and arguments made at the hearing. The identical deed covenant in suit has been upheld by this Court, as in this case, in

Torrey v. Wolfes, 56 App. D. C. 4; 6 F. (2d) 702

Cornish v. O'Donoghue, 58 App. D. C. 359; 30 F. (2d)

983. Certiorari denied 279 U. S. 871

Grady v. Garland, 67 App. D. C. 73; 89 F. (2d) 817.

The case of Buchanan v. Warley, 245 U. S. 60, cited at the end of Paragraph III, was based entirely on State and Municipal legislation, and is not pertinent to the issues in this case.

Every case on the subject of public policy, passed on by this Court, clearly negatives the contention of Paragraph IV of the Motion as to the public policy of the United States or of the District of Columbia. See Mays v. Burgess, 79 U. S. App. D. C. 343, under headings 6-8, for a comprehensive statement. Quoting briefly: "The public policy of a State of which courts take notice and to which they give effect . . . may, not—properly—be found in our personal views on sociological problems." The covenant is not a "race-hating" restrictive covenant, as charged, except as appellants and their attorneys make them such.

The Motion should be denied.

Respectfully, Henry Gilligan, Attorney for Appellees.

June 12, 1947.

Service of copy admitted: 6/12/1947 mailed, postpaid, to Raphael G. Urciolo, pro se. Charles H. Houston, Attorney for all other Appellants.

[fol. 444] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jun. 16, 1947. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

Affidavits in Support of Motion for Rehearing Showing Changes in Property Ownership Since Trial of Case

Charles H. Houston, Spottswood W. Robinson, III,  
615 F Street, Northwest, Attorneys for Appellants-Movants.

[fol. 445] Affidavits in Support of Motion for Rehearing Showing Changes in Property Ownership Since Trial of Case

Appellants-movants James M. Hurd and Mary M. Hurd, No. 9196, and Robert H. Rowe and Isabella J. Rowe, Herbert B. Savage and Georgia N. Savage, and Pauline B. Stewart, No. 9197, under the authority of *Hundley vs. Gorwitz*, 77 U. S. App. 48, p. 49, filed the attached affidavits showing changes in property ownership and occupancy among the twenty covenanted houses in the 100 block of Bryant Street, Northwest, which have occurred since the case was tried in the District Court of the United States as further evidence of the change in the character of the neighborhood. They note that the property of Francis M. Lanigan, one of the original plaintiffs, has been sold; like-

wise, the property of Marchegiani. Nine out of the twenty covenanted houses in the 100 block of Bryant Street, Northwest, are owned and occupied by Negroes or by white persons who desire to have the covenant removed. Seven of these nine houses are owned and occupied by Negroes, making eighteen houses out of thirty-one in the block now owned and occupied by Negroes. And in the language of *Hundley vs. Gorwitz* at page 50:

"And this is just the beginning."

Appellants-movants pray that these affidavits may be considered in support of their motion for rehearing heretofore filed.

Respectfully submitted, Charles H. Houston, Spottswood W. Robinson, III, Attorneys for Movants.

Service accepted: Henry Gilligan, Attorney for Appellees.

June 16th, 1947.

[fol. 446] IN THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF CHARLES E. RUSSELL

City of Washington, District of Columbia, to wit:

Charles E. Russell, being first duly sworn, upon oath deposes and says:

That he is owner of record with his wife, Mary Russell, as tenants by the entirety, of Lot 111 in Square 3125 with

improvements thereon known as 122 Bryant Street, Northwest.

That this property was formerly owned by Francis M. Lanigan, one of the original plaintiffs in the above entitled cause.

That he is a member of the white race.

4 That he is and has been unwilling to bring any action, or to join in any action to enforce the racial covenant upon the properties in the block wherein his house is located.

That he and his wife have occupied the premises they own since taking title thereto.

(S.) Charles E. Russell.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 447] IN THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF VERNON H. NELSON AND JULIA A. NELSON

Washington, District of Columbia:

Vernon H. Nelson and Julia A. Nelson, being first duly sworn, upon oath depose and say:

That they are owners of record, jointly with William L. Nelson, of Lot 110 in Square 3125 with improvements thereon known as 124 Bryant Street, Northwest; and they now occupy said premises.

That this property was formerly owned by Constantino Marchegiani and Mary M. Marchegiani, two of the original plaintiffs in the above entitled cause.

That, as owners, they are not only unwilling to have the racial covenant enforced but also prefer to have said covenant erased from the record.

(S.) Vernon H. Nelson, Julia A. Nelson.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 448] IN THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF RALPH MILONE

Washington, District of Columbia, to wit:

Ralph Milone, being first duly sworn, upon oath deposes and says:

That he is the present owner of record of Lot 141 in Square No. 3125 with improvements thereon known as 140 Bryant St., N. W.

That this property was formerly owned by Helen E. Pyles, one of the original plaintiffs in the above entitled cause.

That he is a member of the white race.

That he is not only unwilling to have the racial covenant enforced but also prefers to have said covenant erased from the record.

Further the deponent sayeth not.

(S.) Ralph Milone.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 449] IN THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAËL G. URGIOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF AUGUSTUS M. WILLIAMS AND BEATRICE  
WILLIAMS

City of Washington, District of Columbia, to wit:

Augustus M. Williams and Beatrice Williams, being duly sworn, upon oath depose and say:

That they are the present owners of record of Lot 109 in Square 3125 with improvements thereon known as 126 Bryant Street, Northwest.

That they now occupy said premises.

That they, as owners, are not only unwilling to have the racial covenant enforced, but also prefer to have said covenant erased from the record.

(S.) Augustus M. Williams, Beatrice Williams.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 450] IN THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

No. 9196

JAMES M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILOLO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

AFFIDAVIT OF JOHN ASKEW

City of Washington, District of Columbia, to wit:

John Askew, being first duly sworn, upon oath deposes and says:

That he is the present owner of record of Lot 139 in Square 3125 with improvements thereon known as 144 Bryant Street, N. W.

That he now occupies said premises with his family.

That he, as owner, is not only unwilling to have the racial covenant enforced, but also prefers to have said covenant erased from the record.

(S.) John Askew.

Subscribed and sworn to before me this 13th day of June, 1947. (S.) Louis A. DeMarco, Notary Public, D. C.

[fol. 451] [Stamp:] United States Court of Appeals for  
the District of Columbia. Filed June 18, 1947. Joseph  
W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA—JANUARY TERM, 1946

Nos. 9196 and 9197

No. 9196

JAMES M. HURD, et al, Appellants,

vs.

FREDERIC E. HODGE, et al, Appellees

No. 9197

RAPHAEL G. URGIOLO, et al, Appellants,

vs.

FREDERIC E. HODGE, et al, Appellees

ANSWER TO AFFIDAVITS IN SUPPORT OF MOTION FOR REHEARING

Florence E. Urciolo, wife of the defendant, Raphael G. Urciolo, and a "straw" for him (R. P. 12) made the following conveyances After the Judgment for Injunction, rendered on December 10th, 1945:

To affiants Augustus M. & Beatrice Williams, on March 21, 1946, Instrument number 11244, recorded in Liber 8236, folio 466, of the Land Records of the District of Columbia; Lot 109, Square 3125;

To John Askew on November 20, 1946, Instrument No. 52352 of said Land Records; Lot 139, Square 3125; not yet copied into the records.

To Vernon H. Nelson, Julia A. Nelson, his wife, and William L. Nelson on July 24, 1946, Instrument No. 32385, recorded in Liber 8307, folio 140 of said Land Records.

No conveyances to the affiants Charles E. Russell and Mary Russell of Lot 111, Square 3125; nor of Lot 141, Square 3125 to Ralph Milone appear of record as of June 16th, 1947.

The Injunction granted by the District Court of the United States and affirmed by this Court includes Lots 109

and 139, Square 3125. In direct violation of this Injunction [fol. 452] the said appellee, Raphael G. Urciolo, caused his "straw" party to make the conveyances of these two lots to Negroes, and he is, accordingly, in contempt of the Courts, both the District Court and this Court of Appeals. The Negro appellants have the effrontery, through Counsel, to file these affidavits in support of a Motion for Rehearing, carefully refraining from disclosing to the Court the fact that three of the affidavits are made by Negroes; all holding in violation of the covenant and three of the affiants in violation of the Injunction issued in the case at issue. The other two affiants claim to be persons of the white race. Counsel for appellees assures this Court that Contempt proceedings will be brought against appellant Raphael G. Urciolo and Florence E. Urciolo, his wife and "straw" in due course, in the District Court of the United States for the District of Columbia.

The affidavits submitted most clearly disclose to the Court the lengths to which appellants will go to discredit and nullify the Injunction issued by the lower Court and upheld by this Court.

Respectfully submitted, Henry Gilligan, Attorney for  
Appellees, 626 Washington Loan & Trust Bldg.

June 18, 1947.

Service acknowledged on original.

[fol. 453] [Stamp:] United States Court of Appeals for  
the District of Columbia. Filed June 23, 1947. Joseph  
W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA—APRIL TERM, 1947

No. 9196

JOSEPH M. HURD, et al., Appellants,

v.

FREDERIC E. HODGE, et al., Appellees

No. 9197

April Term, 1947

RAPHAEL G. URCILOLO, et al., Appellants,

v.

FREDERIC E. HODGE, et al., Appellees

Before Edgerton, Clark and Wilbur K. Miller, JJ.

ORDER

On consideration of motion for rehearing by appellants  
James M. Hurd and Mary M. Hurd in No. 9196, and appel-  
lants Robert H. Rowe, Isabella J. Rowe, Herbert B. Savage,  
Georgia N. Savage, and Pauline B. Stewart in No. 9197, and  
of the answer of appellees, the affidavits in support of the  
motion, and of appellees' answer to said affidavits, and on  
consideration of the motion of appellant Raphael G. Urciolo  
in No. 9197 for rehearing, it is

Ordered by the court that the motions for rehearing be,  
and they are hereby, denied.

Per Curiam.

Dated June 23, 1947.

[fol. 454] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Jul. 2, 1947. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 9196

JOSEPH M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix to briefs.
2. Opinion, as corrected.
3. Judgment.
4. Motions for rehearing and supporting affidavits.
5. Answer to affidavits in support of motions for rehearing.
6. Order denying motion for rehearing.
7. This designation.
8. Clerk's certificate.

Raphael G. Urciolo, pro se; Charles H. Houston, Attorney for Appellants, Except Urciolo.

Service Accepted: Henry Gilligan, Attorney for Appellees.

[fol. 455] [Stamp:] United States Court of Appeals for  
the District of Columbia. Filed Jul: 17, 1947. Joseph W.  
Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA

No. 9196

JOSEPH M. HURD, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

No. 9197

RAPHAEL G. URCILO, et al., Appellants,

vs.

FREDERIC E. HODGE, et al., Appellees

DESIGNATION FOR APPELLEES OF ADDITIONAL PORTIONS OF  
RECORD

Appellees designate the following matter to be designated  
in the record for use on petition for writ of certiorari, in  
addition to the matters designated by the appellants:

1. Answer opposing rehearing.
2. This designation.

Henry Gilligan, by James A. Crooks, Attorneys for  
Appellees.

Service of copy admitted: — — —, Attorney for Appel-  
lants, except Urciolo.

Copy mailed, postpaid, July 17th, 1947, to Raphael G.  
Urciolo, pro se, to 907 New York Avenue, N. W., Wash-  
ington, D. C.

James A. Crooks.

[fol. 456] UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 455, both inclusive, constitute a true copy of the joint appendices to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for appellants and for appellees in the cases of No. 9196, Joseph M. Hurd, et al., Appellants, vs. Frederic E. Hodge, et al., Appellees. No. 9197, Raphael G. Urciolo, et al., Appellants, vs. Frederic E. Hodge, et al., Appellees April Term, 1947, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this eighteenth day of July, A. D. 1947.

Joseph W. Stewart, Clerk of the United States Court  
of Appeals for the District of Columbia. (Seal.)

(1741)

[fol. 457] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1947

No. 290

ORDER ALLOWING CERTIORARI—Filed October 20, 1947

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is assigned for argument immediately following No. 87, McGhee et al. vs. Sipes et al.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 458] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1947

No. 291

ORDER ALLOWING CERTIORARI—Filed October 20, 1947

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is assigned for argument immediately following No. 87 and 290.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3328)

FILE COPY

1947 OCT 22

CHARLES ELMON SHIPLEY  
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 290

JAMES M. HURD AND MARY I. HURD,

*Petitioners,*

vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DERITA, VICTORIA DERITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,

*Respondents*

No. 291

RAPHAEL G. URCIOLO, ROBERT H. ROWE, ISABELLE J. ROWE,  
HERBERT B. SAVAGE, GEORGIA N. SAVAGE, AND PAULINE  
B. STEWART,

*Petitioners,*

vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DERITA, VICTORIA DERITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA, AND MAR-  
GARET GIANCOLA,

*Respondents*

CONSOLIDATED PETITIONS AND SUPPORTING  
BRIEF FOR WRITS OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA.

RAPHAEL G. URCIOLO, *Pro se,*

CHARLES H. HOUSTON,  
SPOTTSWOOD W. ROBINSON, III,  
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## INDEX

	Page
Consolidated petitions for writs of certiorari	1
Summary statement of the matter involved	2
Jurisdiction	4
Questions presented	4
Provisions of Constitution, treaties and statutes involved	5
Reasons for granting the writs	6
Conclusion	9
Brief in support of petitions	11
Opinions below	11
Jurisdiction	12
Statement of the case	12
Specification of errors to be urged	12
Summary of argument	13
Argument	14
I. This case presents questions of general importance which have not been, but should be, settled by this Court, namely, whether courts may enforce private agreements which, solely on the basis of race or creed, attempt to prevent a substantial proportion of the people in the United States from purchasing and occupying land for residential purposes	14
A. Domestic importance of questions	15
B. International importance	18
II. This case presents questions of substance relating to the Constitution, Laws and Treaties of the United States, which have not been, but should be, settled by this Court	18
A. Judicial enforcement of a restrictive covenant which, solely on the basis of race, (1) forbids a person from acquiring, occupying and sell-	

ing land, and (2) forbids an owner of land from selling it to any member of the restricted group, is in violation of the due process clause of the Fifth Amendment.

18

B. Judicial enforcement of a restrictive covenant which, solely on the basis of race, forbids a person from purchasing and occupying land for residential purposes, is in violation of Section 1978, Revised Statutes

25

C. Judicial enforcement of a restrictive covenant which, solely on the basis of race, forbids a person from purchasing and occupying land is in violation of a Treaty of the United States, namely, the Charter of the United Nations to which the United States adheres

25

III. Racial restrictive covenants, and their enforcement by the courts, are so plainly contrary to the public policy of the United States, that the judgments of the court below should be reversed by this Court.

26

IV. Because of the discriminatory character and inequity of agreements restricting the sale, purchase and occupancy of land solely on the basis of race, no court of equity should lend its aid to the specific enforcement of such agreements

29

V. Racial restrictive covenants are void as unreasonable restraints on alienation

30

VI. This Court did not, in *Corrigan v. Buckley*, 271 U. S. 323 (1926), decide the questions which are here urged. Since the decisions of the courts below, as well as the decisions of numerous State courts since 1926 in cases involving racial restrictive covenants, were based on erroneous assumptions concerning the case of *Corrigan v. Buckley*, this Court should grant writs of certiorari in this case in order that matters of large public concern may be decided on the merits rather than on misapprehensions as to the views of this Court.

Conclusion

30  
34

TABLE OF AUTHORITIES CITED

Cases:

<i>Allen v. Oklahoma City</i> , 175 Okla. 421, 52 P. (2d) 1054	20
<i>American Federation of Labor v. Swing</i> , 312 U. S. 321	22
<i>Atlantic Coast Line R. R. Co. v. Powe</i> , 283 U. S. 401	14
<i>Bakery Drivers Local v. Wohl</i> , 315 U. S. 769	22
<i>Barnard's Lessee v. Bailey</i> , 2 Har. (Del.) 56	30
<i>Beasley v. Texas &amp; Pacific Ry. Co.</i> , 191 U. S. 492	30
<i>Block v. Hirsh</i> , 256 U. S. 135	17
<i>Bowen v. City of Atlanta</i> , 159 Ga. 145, 125 S. E. 199	20
<i>Bridges v. California</i> , 314 U. S. 252	22
<i>Brinkerhoff-Faris Co. v. Hill</i> , 281 U. S. 673	22
<i>Buchanan v. Warley</i> , 245 U. S. 60	6, 7, 8, 16, 19, 23, 25, 27
<i>Cantwell v. Connecticut</i> , 310 U. S. 296	22
<i>Chicago, B. &amp; Q. R. Co. v. Chicago</i> , 166 U. S. 226	22
<i>Chy Lung v. Freeman</i> , 92 U. S. 275	18
<i>City of Richmond v. Deans</i> , 281 U. S. 704	16, 20
<i>City of Richmond v. Deans</i> , 37 F. (2d) 712 (C. C. A. 4th)	20

	Page
<i>Clinard v. City of Winston-Salem</i> , 217 N. Car. 119, 6 S. E. (2d) 867	20
<i>Corrigan v. Buckley</i> , 271 U. S. 323	9, 14, 15, 30, 31
<i>Ex parte Virginia</i> , 100 U. S. 339	21, 22
<i>Ex parte Yarbrough</i> , 110 U. S. 651	27
<i>Farrington v. Tokushige</i> , 273 U. S. 284	20
<i>French v. Barber Asphalt Paving Co.</i> , 181 U. S. 324	20
<i>Gandolfo v. Hartman</i> , 49 Fed. 181	24, 26, 29
<i>Glover v. City of Atlanta</i> , 148 Ga. 285, 96 S. E. 562	20
<i>Gospel Spreading Association, Inc., v. Bennetts</i> , 79 U. S. App. D. C. 352, 147 F. (2d) 878	3
<i>Hansberry v. Lee</i> , 311 U. S. 32	15, 22
<i>Harmon v. Tyler</i> , 273 U. S. 668	7, 8, 16, 20
<i>Heiner v. Donnan</i> , 285 U. S. 312	20
<i>In re Drummond Wren</i> , (1945) 4 D. L. R. 674 (On- tario High Court)	18, 26, 29
<i>Irvine v. City of Clifton Forge</i> , 124 Va. 781, 97 S. E. 310	20
<i>Jackson v. State</i> , 132 Md. 311, 103 Atl. 910	20
<i>Jenne v. Jenne</i> , 271 Ill. 526, 111 N. E. 540	30
<i>Kennett v. Chambers</i> , 55 U. S. (14 How.) 38	26, 28
<i>Los Angeles Investment Co. v. Gary</i> , 181 Calif. 680, 186 Pac. 596	6
<i>Marsh v. State of Alabama</i> , 326 U. S. 501	23
<i>McGhee v. Sipes</i> , No. 87, Oct. Term, 1947	6
<i>Moore v. Dempsey</i> , 261 U. S. 86	22
<i>Morton Salt Co. v. G. S. Suppiger Co.</i> , 314 U. S. 488	30
<i>Powell v. Alabama</i> , 287 U. S. 45	22
<i>Raymond v. Chicago Traction Co.</i> , 207 U. S. 20	22
<i>Scholtes v. McColgan</i> , — Md. —, 41 A. (2d) 479	6
<i>Schulte v. Starks</i> , 238 Mich. 102, 213 N. W. 102	6
<i>Scott v. McNeal</i> , 154 U. S. 34	22
<i>Shelley v. Kraemer</i> , No. 72, Oct. Term, 1947	6
<i>Smith v. Allwright</i> , 321 U. S. 649	23
<i>Steele v. Louisville &amp; Nashville Railroad Co.</i> , 323 U. S. 192	23
<i>Twining v. New Jersey</i> , 211 U. S. 78	20, 22
<i>Tyler v. Harmon</i> , 158 La. 439, 104 So. 200; 160 La. 943, 107 So. 704	20
<i>United States v. California</i> , — U. S. — (June 23, 1947, No. 12)	18

# INDEX

	Page
<i>United States v. Carver</i> , 260 U. S. 482	14
<del><i>United States v. Carver</i>, 260 U. S. 482</del>	<del>14</del>
<i>United States v. Morris</i> , 125 Fed. 322	27
<i>United States v. Waddell</i> , 112 U. S. 76	27
<i>Virginia v. Rives</i> , 100 U. S. 313	22
<i>White v. White</i> , 108 W. Va. 128, 150 S. E. 531	6

## Constitution, Statutes, and Treaties:

Fifth Amendment	4, 5, 6, 12, 13, 31
Thirteenth Amendment	31
Fourteenth Amendment	6, 13, 31
Act of March 3, 1911 (36 Stat. 1087, 1159)	31
Act of December 2, 1941 (55 Stat. 788) (District of Columbia Emergency Rent Act)	17
Act of June 30, 1947, Sec. 201 (b), Public Law 129, 80th Cong. (Housing and Rent Act of 1947)	17
D. C. Code (1940) Title 11, Secs. 305, 306	8, 24
Judicial Code, Sec. 24	8, 24
Judicial Code, Sec. 240	4, 12
Judicial Code, Sec. 250	31, 33
Revised Statutes, Sec. 1978	4, 5, 13, 25, 27
Revised Statutes, Sec. 5508	27
Act of Chapultepec, Resolution accompanying	28
Charter of the United Nations, Articles 55(c), 56, (59 Stat. 1031)	5, 8, 12, 18, 25, 26
8 United States Code, Sec. 42	4, 5, 8, 25, 27, 31
18 United States Code, Sec. 51	27
28 United States Code, Sec. 41(1)	8, 24
28 United States Code, Sec. 347(a)	4, 12

## Texts and Miscellaneous:

American Law Institute, Restatement of the Law of Contracts, Vol. 2, Secs. 512, 591 (1932)	29
Bureau of the Census "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C. Metropolitan District" (Population HVet-No. 84, February 4, 1947)	17
Cushman, Robert E. "The Laws of the Land," 36 Survey Graphic 14 (1947)	15

	Page
16 Department of State Bulletin No. 413, pp. 1077, 1080, 1081, 1082 (June 1, 1947)	27
Embree, "Brown Americans," 34 (1943)	16
Gelhorn, Contracts and Public Policy, 35 Col. Law Rev. 678	28
Kahen, Harold I., "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 Univ. Chi. L. Rev. 198 (February, 1945),	15, 19, 23
Kenny, Robert W., "The Inter American Bar and Racial Equality," 4 Lawy. Guild Rev., No. 4, p. 7 (July, 1944)	18
Kramer, Ferd, President of Chicago's Metropolitan Housing Council, The Chicago Sun (November 29, 1944, p. 7)	16
McGovney, D. O., "Racial Residential Segregation by State Courts Enforcement of Restrictive Agreements, Covenants and Conditions in Deeds is Unconstitutional," 33 Calif. L. Rev. 5 (1945)	23
Myrdal, Gunnar, "An American Dilemma, The Negro Problem and Modern Democracy," 624 (1944)	15, 16
President Truman, Address of, 38th Annual Conference of National Association for the Advancement of Colored People (p. 4, The Washington Post, June 30, 1947)	28
Racial Problems in Housing, Bulletin No. 2 (National Urban League, New York, 1942)	16
Report on Negro Housing of the President's Conference on Home Building and Home Ownership, pp. 45, 46, 143-198 (1932)	16
Report of Pennsylvania State Temporary Commission on Conditions of the Urban Colored Population, 139-142 (1943)	16
Report of Sub-Committee on Housing, Report of the Governor's Commission on Problems Affecting the Negro Population (Balto., 1943)	16
Robinson, Corienne K., "Relationship Between Condition of Dwellings and Rentals, By Race," 22 Journal of Land & Public Utility Economics 296 (Aug. 1946)	15

# INDEX

	Page
U. S. Census, 1930: Negroes in the District of Columbia	17
U. S. Census, 1940: Negroes in the District of Columbia	17
Weaver, Robert C., "Housing in a Democracy," <i>Annals of the American Academy of Political and Social Science</i> , 95-96 (March, 1946)	16
Williston on Contracts (Rev. Ed. 1937), Secs. 1652, 1652A, 1653	29
Woofter, "Negro Problems in Cities," 95 (1928)	16



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1947**

**No.**

**JAMES M. HURD AND MARY I. HURD,**

*Petitioners,*

**vs.**

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,**

*Respondents*

**No.**

**RAPHAEL G. URICIOLO, ROBERT H. ROWE, ISABELLE J. ROWE,  
HERBERT B. SAVAGE, GEORGIA N. SAVAGE AND PAULINE  
B. STEWART,**

*Petitioners,*

**vs.**

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,**

*Respondents*

**CONSOLIDATED PETITIONS FOR WRITS OF CER-  
TIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA.**

The petitioners pray that writs of certiorari issue to review the judgments of the United States Court of Appeals for the District of Columbia entered in the above entitled causes on May 26, 1947, affirming the judgments of the United States District Court for the District of Columbia.

### Summary Statement of the Matter Involved

The trial court found that petitioner Urciolo (who appears *pro se*) is a white man (R. 380) and that the other petitioners are Negroes (R. 380). Urciolo had conveyed three parcels<sup>1</sup> of improved residential land in the 100 block of Bryant Street, Northwest, in the District of Columbia to the petitioners Rowe, Sayage, and Stewart, respectively (R. 382). Urciolo now owns three other parcels<sup>2</sup> in the same block (R. 382). Petitioners Hurd are the grantees from one Ryan and his wife<sup>3</sup> of another parcel<sup>4</sup> in the same block (R. 381). The grantees now occupy as their homes the property conveyed to them (R. 381, 382).

In the 100 block of Bryant Street, Northwest, there are 31 lots on the south side of the street improved by 31 dwellings; the north side of the street is the southern boundary of a public park (R. 381). Twenty lots on the south side of the street were sold about 1906 subject to the following covenant in the respective deeds (R. 380):

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

The 7 lots here involved are part of these 20 lots. The remaining 11 of the 31 lots on the south side of the street, as well as almost all of the contiguous areas to the south and west, have been owned and occupied by Negroes for

<sup>1</sup> Premises 118, 134 and 150 Bryant Street, Northwest.

<sup>2</sup> Premises 126, 144 and 152 Bryant Street, Northwest.

<sup>3</sup> Francis X. Ryan and his wife, the grantors of petitioners Hurd, were subjected to jurisdiction by publication, and never appeared or participated in the case, and are not parties to these petitions. Without any evidence whatever, the trial court found that the Ryans are white (R. 380, 407).

<sup>4</sup> Premises 116 Bryant Street, Northwest.

many years (R. 381). The residential property in the area has a 30% greater monetary sale value to Negro purchasers than to white purchasers (R. 261, 263).

This proceeding originated when the respondents, neighboring property owners, sought and obtained in the United States District Court for the District of Columbia judgments (1) declaring null and void the deeds to the grantee petitioners and revesting title to the respective premises in Urciolo and Ryan, (2) permanently enjoining Urciolo and Ryan, respectively, from renting, leasing, selling, transferring or conveying any of the above 7 lots to any Negro or colored person; (3) permanently enjoining the grantee petitioners from renting, leasing, selling, transferring or conveying their above respective premises to any one; and (4) ordering the Negro petitioners "to remove themselves and all of their personal belongings from the land and premises now occupied by them" (R. 384-5, 411-12).

The Court of Appeals (Justices Clark and Wilbur K. Miller) affirmed on the basis of its prior decisions, holding that "the appellants have presented no contention that is not answered by those decisions" (R. 418). Justice Edgerton dissented (R. 420) on five general<sup>5</sup> grounds, each independent of the other four, namely:

1. "The covenants are void as unreasonable restraints on alienation."
2. "They are void because contrary to public policy."
3. "Their enforcement by injunction is inequitable."

<sup>5</sup> Justice Edgerton also dissented on two special grounds: (1) Enforcement of the covenant would defeat its original purposes since Negroes will pay much more than whites for the property and since the neighborhood is no longer white; and (2) the injunctions, against both transfer and occupancy, are broader than the covenant, since the covenant did not forbid use and occupancy. *Gospel Spreading Association, Inc. v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878 (R. 422).

4. "Their enforcement by injunction violates the due process clause of the Fifth Amendment."

5. "Their enforcement by injunction violates the Civil Rights Act." (Rev. Stats., Sec. 1978, 8 U. S. C., Sec. 42.)

Each ground considered by Justice Edgerton was briefed and argued by petitioners in the Court of Appeals.

### **Jurisdiction**

The judgments of the Court of Appeals were entered on May 26, 1947 (R. 433). The petition for rehearing filed by petitioners was denied on June 23, 1947 (R. 453). The jurisdiction of this Court is invoked under Section 240 of the Judicial Code (28 U. S. C. § 347(a)).

### **Questions Presented**

Whether the judicial enforcement of agreements restricting the sale of land by a willing seller and the acquisition and occupancy of land by a willing buyer, where the restriction is based solely on the race or creed of the buyer:

(a) violates the Fifth Amendment;

(b) is contrary to sec. 1978, Revised Statutes, 8 U. S. C., sec. 42;

(c) violates a treaty of the United States, namely, the Charter of the United Nations to which the United States has adhered;

(d) is contrary to the public policy of the United States;

(e) should be denied because the specific enforcement of such restriction would be of such discriminatory character and so greatly inequitable, especially so under present housing conditions, that a court of equity should not

lend its aid by requiring specific performance of the covenant; and

(f) should be denied because the covenants are void as unreasonable restraints on alienation.

### **Provisions of Constitution, Treaties and Statute Involved**

The Fifth Amendment of the Constitution provides in part:

"No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

The Charter of the United Nations provides in part:

Art. 55. "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . ."

(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Art. 56. "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

The Civil Rights Act, R. S. § 1978, 8 U. S. C. § 42, provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

### Reasons for Granting the Writs

1. This Court has already granted writs of certiorari in two cases involving the validity of judicial enforcement of racial restrictive covenants,<sup>6</sup> and this Court should consider this case along with those cases. There are special reason for granting certiorari in this case. (a) The other two cases involve covenants against use and occupancy, whereas this case involves a covenant against alienation only.<sup>7</sup> (b) In enjoining use and occupancy by, and alienation to, the grantees, the courts below were not enforcing the covenant but were *judicially legislating*, without predication upon a previous private agreement, the very use and occupancy restriction forbidden in *Buchanan v. Warley*, 245 U. S. 60. (c) The other two cases arise from areas under State jurisdiction whereas this case arises from an area under the exclusive jurisdiction of the Federal Government. The very fact that this case arises from a Federal Court in the Nation's capital raises broader considerations of public policy than may be present in cases arising from State courts. Actual or fancied differences by way of claimed distinctions between the Fifth and Fourteenth Amendments, or as to the effects of the Civil Rights Act in State and Federal areas, or as to the questions presented, may therefore produce further unnecessary conflicts and litigation, if the writs herein sought are not granted. (d) In addition, one of the petitioners in this case is a white owner of land seeking to prevent the restriction of his right to sell

<sup>6</sup> *McGhee v. Sipes*, No. 87, Oct. Term, 1947 (from Supreme Court of Michigan); and *Shelley v. Kraemer*, No. 72, Oct. Term, 1947 (from Supreme Court of Missouri).

<sup>7</sup> Some State courts, while upholding racial covenants restricting use and occupancy, invalidate racial covenants restricting sale or alienation, see e. g., *Los Angeles Investment Co. v. Gary*, 181 Cal. 680, 186 Pac. 596; *Schulte v. Starks*, 238 Mich. 102, 213 N. W. 102; *Scholtes v. McColgan*, — Md. —, 41 A. (2d) 479; *White v. White*, 108 W. Va. 128, 150 S. E. 531.

his property on a free market (Cf. *Buchanan v. Warley*, 245 U. S. 60). (e) Finally, unless writs of certiorari are granted in this case, the judgments declaring the deeds of the grantees null and void may become *res judicata* and cause irreparable injury to the grantees, even though this Court may, in the two cases in which certiorari has already been granted, hold that racial restrictive covenants are not judicially enforceable.

2. Enforcement of the restrictive covenant by Federal court injunction violates the due process clause of the Fifth Amendment. In *Buchanan v. Warley*, 245 U. S. 60; this Court held that enforcement of a Louisville ordinance which forbade Negroes to move into predominantly white city blocks would violate the due process clause of the Fourteenth Amendment. In *Harmon v. Tyler*, 273 U. S. 668, this Court held void a New Orleans ordinance which forbade Negroes to establish residence in a white community and whites to establish residence in a Negro community "except on the written consent of a majority of the persons of the opposite race inhabiting such community."

Had the racial restriction in this case been enacted by a legislative body, its judicial enforcement would be unconstitutional under the doctrine of those cases. Judicial enforcement of a racial restriction is no less violative of constitutional rights merely because the restriction has its origin in private agreement rather than in legislative enactment. In either case direct government action is the effective enforcing agent. Nor is it material whether it is through the legislative or the judicial branch of the government that constitutional guarantees are infringed. The difference is particularly meaningless where, as here, the court involved is a Federal District Court, whose powers to grant equitable relief are exclusively derived from Acts of Congress, Judi-

cial Code, Sec. 24, 28 U. S. C. § 41(1); 11 D. C. Code (1940) §§ 305, 306.

3. Whether the issuance of the injunction in this case is consistent with the Civil Rights Act, 8 U. S. C. § 42, presents an important Federal question which has not been, but should be, determined by this Court. Enforcement of a restrictive covenant by Federal court injunction violates that Act, which provides that:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

4. Whether the enforcement of the covenant by Federal court injunction is compatible with Articles 55(c) and 56 of the Charter of the United Nations, 59 Stat. 1031, 1045-1046, presents an important Federal question which has not been, but should be, determined by this Court. Enforcement of a racial covenant by Federal court injunction violates that treaty, which provides that:

"the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race."

5. The covenant and its enforcement are void because contrary to the public policy of the United States. The public policy is expressed (a) by the Constitution, as construed in *Buchanan v. Warley*, 245 U. S. 60, and *Harmon v. Tyler*, 273 U. S. 668; (b) by the Civil Rights Act; (c) by the treaties and other international commitments of the United States; and (d) by the President of the United States. In addition, the severe effects of the covenant on the housing, health and safety of a substantial proportion of the people of the United States demonstrates that judi-

cial enforcement of the covenant would be against public policy, and should not be countenanced.

6. The enforcement of the covenant is so discriminatory and so inequitable that no court should lend its aid by specific enforcement.

7. The perpetual covenant in this suit is void as an unreasonable restraint on alienation.

8. This Court did not, in *Corrigan v. Buckley*, 271 U. S. 323 (1926), decide the questions which are here urged. Since the decisions of the courts below, as well as the decisions of numerous State courts since 1926 in cases involving racial restrictive covenants, were based on erroneous assumptions concerning the case of *Corrigan v. Buckley*, this Court should grant writs of certiorari in this case in order that matters of large public concern may be decided on the merits rather than on misapprehensions as to the views of this Court.

### Conclusion

It is respectfully submitted that the petitions for writs of certiorari should be granted.

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1947**

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DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,**

*Respondents*

**BRIEF IN SUPPORT OF CONSOLIDATED PETITIONS  
FOR WRITS OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA.**

**Opinions Below**

The opinion of the Court of Appeals (R. 417-432) is re-  
ported in — F. (2d) —. The District Court's Findings of  
Fact, Conclusions of Law and Judgment in *Hurd v. Hodge*

are on pages 379-385 of the Record, and in *Urciolo v. Hodge* on pages 406-413.

### **Jurisdiction**

The jurisdiction of this Court is invoked under section 240 of the Judicial Code. 28 U. S. C., Sec. 347(a).

The judgments sought to be reviewed were entered by the United States Court of Appeals for the District of Columbia on the 26th day of May, 1947 (R. 433). Motion for rehearing was duly filed and denied on the 23rd day of June, 1947 (R. 434, 453).

### **Statement of the Case**

The statement of the case and a statement of the salient facts from the record appear in the accompanying petitions for certiorari.

### **Specification of Errors to Be Urged**

The Court of Appeals for the District of Columbia erred:

(1) In failing to hold that enforcement of the covenant by Federal Court injunction violates the Fifth Amendment of the Constitution.

(2) In failing to hold that enforcement of the covenant by Federal Court injunction violates the Civil Rights Act.

(3) In failing to hold that enforcement of the covenant by Federal Court injunction violates the United Nations Charter.

(4) In failing to hold that the covenant and its enforcement are void because contrary to the public policy of the United States.

(5) In failing to hold that the hardship to grantee petitioners from enforcing the covenant would so outweigh the benefit to respondents that a court of equity would not enforce the covenant.

(6) In failing to hold that the covenant is void as an unreasonable restraint on alienation.

(7) In affirming the judgments of the District Court for the District of Columbia.

### **Summary of Argument**

The questions presented involve matters of large domestic and international importance. These questions have not been, but should be, settled by this Court.

This case presents questions of substance relating to the Constitution, Laws and Treaties of the United States, which have not been, but should be settled by this Court. Judicial enforcement of a restrictive covenant which, solely on the basis of race, (1) forbids a person from acquiring, occupying and selling land and (2) forbids an owner of land from selling it to any member of the restricted group, is in violation of the due process clause of the Fifth Amendment. This Court has held that the legislative imposition of such restriction is unconstitutional under the Fourteenth Amendment. The guaranty of due process in the Fifth Amendment is similar to that in the Fourteenth Amendment and applies to the District of Columbia. The prohibition of the due process clause applies to judicial action. Both the legislature and the judiciary are arms of the government. A result forbidden by the Constitution to the legislature cannot be achieved through judicial enforcement of private agreements as against willing sellers and willing buyers. Judicial enforcement of restrictive covenants also violates Section 1978 of the Revised Statutes and a treaty of the United States, namely, the United Nations Charter.

Racial restrictive covenants and their enforcement by the courts are so plainly contrary to the public policy of the United States that the judgment of the court below should be reversed by this Court.

Because of the discriminatory character and inequity of agreements restricting the sale, purchase and occupancy of land solely on the basis of race; no court of equity should lend its aid to the specific enforcement of such agreements.

Racial restrictive covenants are void as unreasonable restraints on alienation.

This Court did not, in *Corrigan v. Buckley*, 271 U. S. 323 (1926), decide the questions, which are here urged. Since the decisions of the courts below, as well as the decisions of numerous State courts since 1926 in cases involving racial restrictive covenants, were based on erroneous assumptions concerning the case of *Corrigan v. Buckley*, this Court should grant writs of certiorari in this case in order that matters of large public concern may be decided on the merits rather than on misapprehensions as to the views of this Court.

## ARGUMENT

### I

This case presents questions of general importance which have not been, but should be, settled by this Court, namely, whether courts may enforce private agreements which, solely on the basis of race or creed, attempt to prevent a substantial proportion of the people in the United States from purchasing and occupying land for residential purposes.

Only two cases involving racial restrictive covenants have heretofore been decided by this Court.<sup>1</sup> One was dismissed

<sup>1</sup> This Court has denied petitions for certiorari in several prior cases involving racial restrictive covenants. But as this Court has said (Justice Holmes): "The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times." *United States v. Carver*, 260 U. S. 482, 490; *Atlantic Coast Line R. R. Co. v. Powe*, 283 U. S. 401, 403, 404.

for want of jurisdiction;<sup>2</sup> and the other was decided solely on the question whether a judgment in a prior collusive suit was *res judicata* as to persons not parties to the prior suit.<sup>3</sup>

### A. Domestic Importance of Questions

Limitations upon land use for living space by members of racial or religious minorities constitute at present one of the gravest dangers to democracy in America. During the past two decades, racial restrictive covenants have been extensively and uniformly imposed in most of the major cities of the nation on almost all newly constructed dwellings, new residential subdivisions, and existing residential properties contiguous to areas occupied by Negroes. This private, and wholesale, zoning has hemmed one of the restricted groups, Negroes, into virtual Ghettos.<sup>4</sup> There can be no relief from this ever-increasing constriction so long as these covenants place artificial yet impassable boundaries—iron rings in depth—around the existing areas of Negro occupancy, and bar Negroes of all income groups from occupancy in most suburban areas where new construction has been concentrated. The lack of sufficient space from decent living and normal expansion which has resulted largely from those restrictions on the housing market and the increased urbanization of the Negro population, have caused enormous inflation of rentals and housing costs for Negroes,<sup>5</sup> excessive crowding in dwellings and congestion

<sup>2</sup> *Corrigan v. Buckley*, 271 U. S. 323 (1926).

<sup>3</sup> *Hansberry v. Lee*, 311 U. S. 32.

<sup>4</sup> See Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 Univ. Chi. L. Rev. 198, 204 (Feb. 1945); Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," 624 (1944); Robert E. Gushman, "The Laws of the Land," 36 Survey Graphic 14, 17 (1947).

<sup>5</sup> Corienne K. Robinson, "Relationship Between Condition of Dwellings and Rentals, By Race," 22 Journal of Land & Public Utility Economics 296 (Aug. 1946).

of neighborhoods,<sup>6</sup> and deterioration into slums, with the universally known baneful effects upon the economic, social and moral life, not only of the Negroes, but also of the entire community.<sup>7</sup> No legislature may constitutionally enact a statute imposing racial restrictions on land use.<sup>8</sup> Yet the wholesale and extensive imposition of these racial restrictive covenants has a more drastic effect than any legislative zoning statute. Through government control, it would at least have been possible to have some sort of planned expansion of areas predominantly occupied by Negroes. But the creation by individuals of racial restrictive covenants ordinarily takes no broader view than that dictated by racial prejudice. A statute may be, and frequently is, repealed or modified to accommodate changed conditions. Most racial

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<sup>6</sup> Embree, "Brown Americans," 34 (1943): "In a single block in Harlem there are 3,871 people. Comparable concentration for the entire population would result in all of the people of the United States living in one half of New York City." The Chicago Sun (Nov. 29, 1944, p. 7) reported a statement by Ferd Kramer, President of Chicago's Metropolitan Housing Council, that in Chicago "about 300,000 Negroes now live in accommodations which would normally house only one-third that number."

In Baltimore, Maryland, Negroes comprise 20% of the population but are constricted into 2% of the residential area. Report of Sub-Committee on Housing, Report of the Governor's Commission on Problems Affecting the Negro Population (Balto., 1943); see also Racial Problems in Housing Bulletin No. 2, National Urban League (New York, 1944).

<sup>7</sup> As long ago as 1932, when the situation was much less acute, the Report on Negro Housing of the President's Conference on Home Building and Home Ownership pointed out that enforced residential segregation "has kept the Negro-occupied sections of cities throughout the country, fatally unwholesome places, a menace to the health, morals and general decency of cities, and 'plague spots for race exploitation, friction and riots.'" (Pp. 45, 46, 143-198.) See also Woolfer, "Negro Problem in Cities," 95 (1928); Report of Pennsylvania State Temporary Commission on the Conditions of the Urban Colored Population, 139-142 (1943); Robert C. Weaver, "Housing in a Democracy," Annals of the American Academy of Political and Social Science, 95-96 (Mar. 1946); Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," 626 (1944).

<sup>8</sup> *Buchanan v. Warely*, 245 U. S. 60; *Harmon v. Tyler*, 273 U. S. 668; *City of Richmond v. Deans*, 281 U. S. 704.

restrictive covenants, however, including the covenant here involved, are *perpetual* restrictions. The increasing use of the racial restrictive covenant is drawing the iron ring tighter and tighter.

This situation is mirrored in the District of Columbia. The Negro population has doubled since 1930.<sup>9</sup> The area open to Negro residence appears, however, actually to have decreased. The shortage of housing in the District has become particularly acute for Negroes (R. 334, 339, 364), and especially for Negro veterans of World War II.<sup>10</sup> In enacting the District of Columbia Emergency Rent Act of 1941 (55 Stat. 788), Congress expressly mentioned "the congested situation with regard to housing accommodations existing at the seat of government." The Housing and Rent Act of 1947<sup>11</sup> states that "Congress recognizes that an emergency exists." This Court has declared that "Housing is a necessary of life," and held that residential use of land is "clothed . . . with a public interest." *Block v. Hirsh*, 256 U. S. 135, 157, 158. The judicial enforcement of these covenants therefore presents questions of general importance to the entire Nation, questions which this Court should now consider and settle.

<sup>9</sup> Negroes in the District of Columbia: 1930 U. S. Census—132,068; 1940 U. S. Census—187,266; 1947 estimate—about 260,000.

<sup>10</sup> A recent survey by the Census Bureau indicates that the gross vacancy rate for privately financed dwelling units in the Washington, D. C. metropolitan area is 1.0% in white neighborhoods and 0.4% in Negro neighborhoods, and that "only three-fourths of the private vacancies in the area were habitable; of these only one-sixth were being offered for rent or sale. . . . One-fourth of the married white World War II veterans and seven-tenths of the married Negro veterans in the Washington Area were doubling up with relatives or friends or were living in rented rooms, trailers or tourist cabins." Bureau of the Census, "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C., Metropolitan District," (Population HVet—No. 84, Feb. 4, 1947).

<sup>11</sup> Act of June 30, 1947, sec. 201(b)), Public Law 129, 80th Cong.

## B. International Importance

In many countries the color of a man's skin is little more important than the color of his hair, and in many others the favored color is not white. Racial segregation and discrimination in the United States are widely advertised throughout the world and embarrass the conduct of foreign affairs of the United States.<sup>12</sup> The recent adherence of the United States to the Charter of the United Nations, which provides that "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race" and that "All Members pledge themselves to take joint and separate action" for that purpose, accentuates the importance of having the questions in this case decided by this Court.

## II

This case presents questions of substance relating to the Constitution, laws and treaties of the United States, which have not been, but should be, settled by this Court.

A. Judicial enforcement of a restrictive covenant which, solely on the basis of race, (1) forbids a person from acquiring, occupying and selling land, and (2) forbids an owner of land from selling it to any member of the restricted group, is in violation of the due process clause of the Fifth Amendment.

This case involves two categories of petitioners, each of which asserts distinct types of property rights. (1) The

<sup>12</sup> Robert W. Kenny, "The Inter American Bar and Racial Equality," 4 Lawyers Guild Rev., No. 4, pp. 7, 8 (July, 1944). Visiting personages and officials of foreign nations have noted, and often suffered from, racial restrictions which prevent their occupying residences in the District of Columbia and in other major cities. With the increasing number of such visitors, these restrictions assume even greater importance in the foreign relations of the United States. See *Chy Lung v. Freeman*, 92 U. S. 275, 279; cf. *United States v. Freeman*, 92 U. S. 275, 279; cf. *United States v. California*, — U. S. — (June 23, 1947, No. 12); *In re Drummond Wren* (1945), 4 D. L. R. 674 (Ontario High Court).

grantee petitioners contend that judicial enforcement of the restrictive covenant violates the due process clause because, solely on the basis of their race, they are prevented by Governmental action from purchasing and occupying land for residential purposes. (2) Petitioner Urciolo, the landowner whom the trial court found to be white, contends that judicial enforcement of the restrictive covenant violates the due process clause because, solely on the basis of the race of prospective buyers, he is prevented by Governmental action from selling his property to a substantial proportion of the potential buyers of residential land.<sup>13</sup>

This Court has protected the rights of both categories mentioned above. In three different cases, this Court has held that legislative restrictions upon the alienation, acquisition and occupancy of land, based solely on race, is unconstitutional under the Fourteenth Amendment as a deprivation of property without due process of law.

*Buchanan v. Warley*, 245 U. S. 60 (Kentucky);<sup>14</sup>

<sup>13</sup> The restrictive covenant is a two-edged sword. Owners of covenanted property often find, as time elapses and the neighborhood changes, that they are unable to dispose of their property to the prohibited groups, although their neighbors had already made such a disposition. See Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 Univ. Chi. L. Rev. 198, 204 (1945).

<sup>14</sup> In *Buchanan v. Warley*, the City of Louisville, Kentucky, forbade colored persons from occupying houses in blocks where the greater number of houses were occupied by white persons, and contained the same prohibitions as to white persons in blocks where the greater number of houses were occupied by colored persons. Buchanan, a white person, brought an action against Warley, a Negro, for the specific performance of a contract for the sale of Buchanan's lot to Warley. Warley defended upon a provision in his contract excusing him from performance in the event that he should not have under the laws of the State and City, the right to occupy the property, and contended that the ordinance prevented his occupancy. This Court held the ordinance unconstitutional.

*Harmon v. Tyler*, 273 U. S. 668 (Louisiana);<sup>15</sup>

*City of Richmond v. Deans*, 281 U. S. 704 (Virginia).<sup>16</sup>

These rulings have been uniformly followed to invalidate similar statutes in other States restricting sale and occupancy of residential property solely on the basis of race;<sup>17</sup> and are applicable to the District of Columbia, since the Fifth Amendment also contains the guarantee of due process which is present in the Fourteenth Amendment.<sup>18</sup>

The petitioners here have been deprived of their property without due process by the Government, acting in this instance through its judicial arm. The decree of the District Court, affirmed by the Court of Appeals, has adjudged null and void the deeds to the grantees and has ordered them to vacate the land and premises and not to convey

<sup>15</sup> In *Harmon v. Tyler*, this Court held unconstitutional an ordinance of the City of New Orleans, Louisiana, which prohibited Negroes from establishing residence in a white community and whites from establishing residence in a Negro community, "except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the city." *Reversing: Tyler v. Harmon*, 158 La. 439, 104 So. 200; 160 La. 943, 107 So. 704 (suit to enjoin owner of cottage in white community from leasing to Negro tenants without obtaining consent of majority of white persons in the community).

<sup>16</sup> In *City of Richmond v. Deans*, this Court held unconstitutional an ordinance of the City of Richmond, Virginia, which attempted to achieve the same result by prohibiting any person from residing in a block where the majority of residences were occupied by those with whom such person was forbidden to intermarry under State law. It was held that the ordinance was based on race alone and was therefore unconstitutional. *Ibid.*, 37 F. (2d) 712 (C. C. A. 4th, 1930) (suit to enjoin City from enforcing ordinance.)

<sup>17</sup> Virginia: *Irvine v. City of Clifton Forge*, 124 Va. 781, 97 S. E. 310; Georgia: *Glover v. City of Atlanta*, 148 Ga. 285, 96 S. E. 562; *Bowen v. City of Atlanta*, 159 Ga. 145, 125 S. E. 199; Maryland: *Jackson v. State*, 132 Md. 311, 103 Atl. 910; North Carolina: *Clinard v. City of Winston-Salem*, 217 N. Car. 119, 6 S. E. (2d) 867; Oklahoma: *Allen v. Oklahoma City*, 175 Okla. 421, 52 P. (2d) 1054.

<sup>18</sup> *Heiner v. Donnan*, 285 U. S. 312, 326; *Twining v. New Jersey*, 211 U. S. 78, 101; *Farrington v. Tokushige*, 273 U. S. 284, 299; *French v. Barber Asphalt Paving Co.*, 181 U. S. 324, 329.

them to anyone, and has permanently enjoined Urciolo from renting, selling, leasing, transferring or conveying his lots to any Negro or colored person. It is not the private respondent, but the sovereignty, speaking through the Court, that has issued mandates (a) to the grantee petitioners enjoining them from occupying, using or selling their property, and (b) to petitioner Urciolo, whom the trial court found to be white, enjoining him from disposing of his property to a large number of people who constitute a substantial proportion of the potential buyers of residential land in the United States. Failure to obey would result in prompt enforcement of the decree through contempt proceedings, fines and incarceration behind bars, in jails maintained and operated by the Government.

If, because of the existence of a racial restrictive covenant, a Negro is privately persuaded or prevented from purchasing or occupying property, or a landowner is privately persuaded or prevented from selling to a Negro, or if the parties to the restrictive agreement each refuse to sell to a Negro, it is the action of the parties which effectively keeps the Negro out and which limits the market of the landowner. The same is true as to other private sanctions which they may be able to apply without resort to governmental forces. But when private sanctions are ineffective to compel obedience to the covenant, and it is necessary to resort to the courts for its enforcement, individual action ceases and governmental action begins.

This Court has held that the prohibition of the due process clause against forbidden governmental action, admittedly applicable to actions by legislatures, is also applicable to actions by courts in their decisions on questions of common law, substantive as well as procedural.

"They [the prohibitions of the 14th Amendment] have reference to actions of the political body denomi-

nated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." *Ex parte Virginia*, 100 U. S. 339, 346-7.

"But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment." *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 234, 235.<sup>19</sup>

Both the legislature and the court act as arms of Government, with the authority of the sovereign. Racial restrictions which the Government may not impose through its

<sup>19</sup> In numerous other cases this Court has held that such rights as are protected by the Fourteenth Amendment against impairment through State legislative action are also protected against impairment through State judicial action. *Virginia v. Rives*, 100 U. S. 313, 318; *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35-6; *Hansberry v. Lee*, 311 U. S. 32, 41; *American Federation of Labor v. Swing*, 312 U. S. 321; *Bakery Drivers Local v. Wohl*, 315 U. S. 769; *Cantwell v. Connecticut*, 310 U. S. 296; *Bridges v. California*, 314 U. S. 252; *Twining v. New Jersey*, 211 U. S. 78, 90-1; *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673; *Powell v. Alabama*, 287 U. S. 45; *Moore v. Dempsey*, 261 U. S. 86; *Scott v. McNeal*, 154 U. S. 34.

legislature are equally forbidden to the Government acting through its courts.<sup>20</sup> The fact that the governmental action forbidden under *Buchanan v. Warley* was initiated by the legislature, whereas the action in these cases was initiated by an individual, is obviously immaterial. For in many of the above-cited cases, wherein this Court held court action violative of the due process clause, the action was initiated by individuals. As Justice Edgerton so aptly remarked in his dissenting opinion in the court below, "The expressed will of a former property-owner cannot authorize the court to deny a right which the expressed will of a legislature could not authorize it to deny." Analogous are the following holdings of this Court, in other contexts: *Marsh v. State of Alabama*, 326 U. S. 501, 505, held that since "all those owners together could not have set up a municipal government with sufficient power to pass an ordinance completely barring" the exercise of the constitutional right, the totality of private ownership of the town could not exercise power, enforceable in the courts, to abridge such constitutional rights. *Smith v. Allwright*, 321 U. S. 649, held that a State, which may not by legislation deprive Negroes of the right to vote, may not achieve the same end through the medium of private political parties. *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192, 203, held that a private union acting as bargaining representative under the authority of federal law may not make discriminations among members of the craft which are not based on relevant differences, and that "discriminations based on race alone are obviously irrelevant and invidious."

<sup>20</sup> D. O. McGovney, "Racial Residential Segregation by State Courts Enforcement of Restrictive Agreements, Covenants and Conditions in Deeds is Unconstitutional," 33 Calif. L. Rev. 5 (1945); Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 Univ. Chi. L. Rev. 198 (1945).

The difference between infringement of constitutional guarantees through the legislature and infringement through the judiciary is particularly meaningless where, as here, the court involved is a Federal District Court, since its powers to grant equitable relief are exclusively derived from acts of Congress. Judicial Code, Sec. 24, 28 U. S. C., Sec. 41(1); 11 D. C. Code (1940), Secs. 305, 306.

Judge Ross, the donor of the American Bar Association's Ross Essay Prize, clearly probed the heart of the question in the first reported case involving a racial restrictive covenant. *Gandolfo v. Hartman*, 49 Fed. 181, 182, 183:

"It would be a very narrow construction of the constitutional amendment in question and of the decisions based upon it, and a very restricted application of the broad principles upon which both the amendment and the decisions proceed, to hold that, while State and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the State may lawfully do so by contract, which the Courts may enforce. Such a view is, I think, entirely inadmissible. Any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the court should no more enforce the one than the other . . . But the principle governing the case is, in my opinion, equally applicable here, where it is sought to enforce an agreement made contrary to the public policy of the government, in contravention of one of its treaties, and in violation of a principle embodied in its Constitution. Such a contract is absolutely void, and should not be enforced in any court—certainly not in a court of equity of the United States."

**B. Judicial Enforcement of a restrictive covenant which, solely on the basis of race, forbids a person from purchasing and occupying land for residential purposes, is in violation of Section 1978, Revised Statutes.**

Section 1978, Revised Statutes, 8 U. S. C. Sec. 42, provides:

“All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.”

Petitioners are citizens of the United States (R. 380; 169, 238, 315, 226, 307). White citizens admittedly have the right to purchase and hold the property here involved. The injunction which the District Court issued denies that right to the grantee petitioners solely on the basis that they are not “white.” The District Court, an arm of the government, has therefore denied to them the “same right . . . as is enjoyed by white citizens” to purchase and hold property. The effect of the injunction is to deny, to others whom the court would hold to be “non-white” citizens, the right which white citizens enjoy to buy and hold other racially restricted property.

This court held in *Buchanan v. Warley*, 245 U. S. 60, that enforcement of a municipal ordinance directed toward the same end as this covenant would violate the Civil Rights Act. Judicial enforcement of this covenant violates that Act just as plainly.

**C. Judicial enforcement of a restrictive covenant which, solely on the basis of race, forbids a person from purchasing and occupying land is in violation of a treaty of the United States, namely, the charter of the United Nations to which the United States adheres.**

The Charter of the United Nations provides that “the United Nations shall promote . . . universal respect

for, and observance of, human rights and fundamental freedoms for all without distinction as to race" and that "All Members pledge themselves to take joint and separate action" for that purpose. Articles 55(c), 56 (59 Stat. 1031, 1045-1046). The United States is a party to the charter, which has been ratified by the Senate as a treaty (59 Stat. 1031), under the Treaty power of the Constitution (Article VI) which provides that "all treaties made . . . under the authority of the United States, shall be the supreme law of the land."

One of the most fundamental of human rights and freedoms is the right and freedom to acquire a home and to live in it. The enforcement, by the judicial arm of the Government of the United States, of restrictive covenants which, solely on the basis of race, forbid a person from purchasing and occupying land for residential purposes, is clearly in violation of the requirement that the Government of the United States "shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race." The supremacy of this Treaty precludes the specific enforcement by any court of a contract which, if enforced, would be contrary to the objectives of the Treaty. *Kennett v. Chambers*, 55 U. S. (14 How.) 38; *In re Drummond Wren*, (1945) 4 Dom. L. R. 674 (Ontario High Court); *Gandolfo v. Hartman*, 49 Fed. 181, 182-3.

### III

Racial restrictive covenants, and their enforcement by the courts, are so plainly contrary to the public policy of the United States, that the judgments of the court below should be reversed by this Court.

Racial restrictive covenants, and their enforcement by the courts, are contrary to the public policy of the United States.

**Constitution.** This Court's decision in *Buchanan v. Warley*, 245 U. S. 60, that the Constitution forbids legislation restricting the sale and occupancy of land solely on the basis of race obviously indicates that the Constitution reflects a national policy against racial restrictive covenants and against the specific enforcement by a court of private contracts which achieve the very same end.

**Statutes.** Explicit formulation of the national public policy against the racial restrictions here involved is also present in the statutes of the United States. Section 1978, Revised Statutes, 8 U. S. C. Sec. 42 provides: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." Under Section 5508, Revised Statutes, 18 U. S. C., Sec. 51, criminal penalties are provided where ". . . two or more persons conspire to injure, oppress, . . . any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . ." This act has been held to apply to agreements between persons to keep Negroes from the right to lease and cultivate private lands. *United States v. Morris*, 125 Fed. 322; see also *United States v. Waddell*, 112 U. S. 76; *Ex Parte Yarbrough*, 110 U. S. 651.

**Treaties.** This national policy is further expressed in the treaties of the United States. By adherence to the Charter of the United Nations, the United States pledged itself to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race." In the treaties with the satellite Axis nations, this country was particularly careful to incorporate guarantees of nondiscrimination against racial minorities. 16 Dept. of State Bulletin No.

1077, 1080, 1081, 1082 (June 1, 1947). And when the Act of Chapultepec was adopted by the United States and the Latin American Nations at the International Conference on Problems of War and Peace, at Mexico City, Mexico, these nations unanimously adopted a resolution on March 6, 1945, that their governments shall "prevent with all the means in their power all that may provoke discrimination among individuals because of racial or religious reasons" (*The New York Times*, p. 9, March 7, 1945).

*President.* On June 29, 1947, the President of the United States stated:<sup>21</sup> "There is no justifiable reason for discrimination because of ancestry, or religion, or race, or color. We must not tolerate such limitations on the freedom of any of our people and on their enjoyment of the basic rights which every citizen in a truly democratic society must possess. Every man should have the right to a decent home . . . We must insure that these rights—on equal terms—are enjoyed by every citizen."

*Effect of Covenants.* Finally, aside from the express formulation of public policy set forth by the Constitution, by statutes, by treaties, and by the President of the United States, the drastic effects of restrictive covenants in accentuating the housing shortage for Negroes and confining them to wretched quarters in overcrowded ghettos, with consequent jeopardy to the health and safety of the community, indicate that such covenants, and their specific enforcement by the judicial arm of the Government, are contrary to the public policy of this country, and should not be countenanced.

*Kennett v. Chambers*, 55 U. S. (14 How.) 38;

*Gelhorn, Contracts and Public Policy*, 35 Col. L. Rev. 678, 691-2;

<sup>21</sup> Address of President Truman, 38th Annual Conference of the National Association for the Advancement of Colored People (p. 4, *The Washington Post*, June 30, 1947.)

Williston on Contracts, (Rev. ed., 1937) secs. 1652, 1652A, 1653;

*Gandolfo v. Hartman*, 49 Fed. 181;

*In re Drummond Wren* (1945), 4 D. L. R. 674 (Ontario High Court) (restrictive covenant held contrary to public policy, partially in reliance upon the Charter of the United Nations.)

American Law Institute, Restatement of the Law of Contracts, Vol. 2, secs. 512, 591 (1932).

#### IV

Because of the discriminatory character and inequity of agreements restricting the sale, purchase and occupancy of land solely on the basis of race, no court of equity should lend its aid to the specific enforcement of such agreements.

The covenants here involved discriminate not only against the entire Negro race, but also against other "colored persons." These may include American Indians<sup>22</sup> and Hawaiians, as well as other American citizens of Filipino, Mexican, Chinese, Japanese, Cuban, Spanish, Latin American, Arab and other ancestry. Probably more than 20,000,000 citizens of the United States are thus restricted from the purchase and sale of residential land. The breadth of this discrimination is utterly contrary to the historic genius of this great country. Furthermore, the familiar principle of "balancing equities" precludes any injunction in this case because the extreme hardship which the injunctions would inflict upon the grantee petitioners (R. 227, 228, 260-64, 309-10, 334, 339, 340, 364) greatly outweighs any benefits which the respondents may conceivably derive from them. Courts of equity should with-

<sup>22</sup> Petitioner Hurd, although found by the trial court to be a Negro, claims to be a Mohawk Indian (R. 238).

hold specific enforcement in these circumstances. *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U. S. 488, 492; *Beasley v. Texas & Pacific Ry. Co.*, 191 U. S. 492, 498.

## V.

**Racial restrictive covenants are void as unreasonable restraints on alienation.**

The number of people which these covenants perpetually exclude from the potential market for the sale of the lands here involved, as well as other lands subjected to restrictive covenants; is so great that the covenants must be held invalid as unreasonable restraints upon alienation. No other restraints of an comparable degree of exclusion have ever been upheld,<sup>23</sup> and all reason is against upholding them. In addition, the restraint is unreasonable and void because it is anthropologically impossible to determine who is a "colored person."

## VI

This Court did not, in *Corrigan v. Buckley*, 271 U. S. 323 (1926), decide the questions which are here urged. Since the decisions of the courts below, as well as the decisions of numerous State courts since 1926 in cases involving racial restrictive covenants, were based on erroneous assumptions concerning the case of *Corrigan v. Buckley*, this Court should grant writs of certiorari in this case in order that matters of large public concern may be decided on the merits rather than on misapprehensions as to the views of this Court.

The erroneous impression that this Court has ruled on the questions here urged is based on misinterpretation of

<sup>23</sup> Restraints on alienation of land have been held invalid where only two persons were excluded, *Jenne v. Jenne*, 271 Ill. 526, 111 N. E. 540; and only the relatives of the testator and his widow were excluded, *Barnard's* where only the relatives of the testator and his widow were excluded, *Barnard's Lessee v. Bailey*, 2 Har. (Del.) 56 (1836).

*Corrigan v. Buckley*, 271 U. S. 323. In that case, Corrigan, Buckley and others had executed an agreement that no part of the properties covered would be sold to, or occupied by, Negroes. Later, Corrigan contracted to sell one of the lots to a Negro. A bill was filed in the trial court of the District of Columbia to enforce the covenant. The defendants moved to dismiss on the sole ground that the "covenant is void," because in conflict with the Constitution and the laws of the United States and with public policy. No other issue was presented by the pleadings or the arguments in the lower courts. No question was raised as to the constitutional propriety of judicial enforcement of the covenant. These motions were overruled, the injunction granted, and the Court of Appeals affirmed.

*Corrigan v. Buckley* reached this Court on *Appeal*, not on certiorari. Section 250 of the Judicial Code as it then read authorized appeals in six types of cases, including (Third) "cases involving the construction or application of the Constitution of the United States . . ." and (Sixth) "cases in which the construction of any law of the United States is drawn in question by the defendant." Act of March 3, 1911, 36 Stat. 1087, 1159. The defendants based their appeal solely on the contention that the covenant was "void" because it violated the 5th, 13th and 14th Amendments and also the Civil Rights Act (Sections 1977, 1978, 1979, Rev. Stats.).

This Court held: *First*, that the 5th and 14th Amendments dealt only with governmental action, not with actions of private persons; that the 13th Amendment dealt only with involuntary servitude; and therefore that the contention that the *covenant was void* under these Amendments raised no substantial question. 271 U. S. 323, 330. *Secondly*, this Court held that the Civil Rights Act did not prohibit or invalidate contracts entered into between private persons concerning their property, saying: "There is no color for

the contention that [the Civil Rights Act] rendered the indenture void . . . . We therefore conclude that neither the constitutional nor statutory questions relied on as grounds for the appeal to this Court have any substantial quality or color of merit, or afford any jurisdictional basis for the appeal." 271 U. S. 323, 331. *Thirdly*, this Court decided that the contention "that the indenture is void as being 'against public policy,' does not involve a constitutional question within the meaning of the" appeal provisions of the Judicial Code. This Court, therefore, dismissed the appeal for want of jurisdiction and without implying that the appealed judgment was right. In fact, since this Court had no jurisdiction, it could not even consider any question not involved in reaching that conclusion. It is plain, therefore, that this Court decided only (a) that the creation by private parties of racial restrictive covenants does not violate the Constitution or the Civil Rights Act, and (b) that the contention that a contract was against public policy was inadequate basis for an *appeal* under the Judicial Code.

No contention that either the Constitution or the Civil Rights Act prohibited *enforcement by injunction* of such covenants was raised by any pleading in any court, or was considered by either the district court or the Court of Appeals. Nevertheless, the appellants undertook, by brief and argument, to raise that question in this Court. This Court said (271 U. S. 323, 331-332):

"And, while it was further urged in this Court that the *decrees of the courts below in themselves* deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under

paragraph 3 of the Code provision, it was not raised by the petition for the appeal or by any assignment of error, either in the Court of Appeals or in this Court; and it likewise is lacking in substance. • • •

"It results that, in the absence of any substantial constitutional or statutory question giving us jurisdiction of this appeal under the provisions of § 250 of the Judicial Code, we cannot determine upon the merits the contentions earnestly pressed by the defendants in this court that the indenture is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant. These are questions involving a consideration of rules not expressed in any constitutional or statutory provisions, but claimed to be a part of the common or general law in force in the District of Columbia; and, plainly, they may not be reviewed under this appeal unless jurisdiction of the case is otherwise acquired.

"Hence, without a consideration of these questions, the appeal must be, and is Dismissed for want of jurisdiction." (Emphasis supplied.)

This Court's reference in *Corrigan v. Buckley*—"and it likewise is lacking in substance"—to the contention thus raised for the first time (that the decrees themselves were unconstitutional) was only *dictum*, since this Court had ruled that there was no jurisdiction to consider the merits of the case and since that question was not in any event properly in that case.

To deny that the Constitution and the Civil Rights Act made a racial restrictive covenant "void" is quite different from saying that such a covenant is enforceable by Court injunction. This Court recognized the difference in the *Corrigan* case. The Court below, however, refused to recognize this difference and based its holding in this case on prior decisions of that Court which were themselves based on misapprehensions of this Court's decision in *Corrigan*

v. *Buckley*. This Court should, therefore, grant certiorari in this case in order that these matters of large public concern may be adjudicated on their merits, not on misapprehensions as to the views of this Court.

### Conclusion

A basic aim of the United States and the allied nations in World War II was the defeat of the same principle of racism which underlies the racial restrictive covenant in this case. To uphold this racial restrictive covenant would nullify the victories won by the United States and the allied nations at such great cost in that war, and deliberately ignore the tensions and misery which the exaltation of racism has imposed on the entire world.

It is respectfully submitted that the petitions for writs of certiorari be granted.

RAPHAEL G. URICIOLO, *Pro se*.

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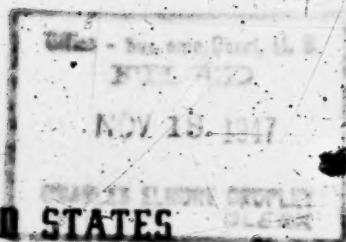
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MORRIS P. GLUSHIEN,  
SYDNEY R. RUBIN.

(1981)





FILE COPY



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1947**

**No. 290**

**JAMES M. HURD AND MARY I. HURD,**

*Petitioners,*

*vs.*

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,**

*Respondents*

**No. 291**

**RAPHAEL G. URICIOLO, ROBERT H. ROWE, ISABELLE J. ROWE,  
HERBERT B. SAVAGE, GEORGIA N. SAVAGE AND PAULINE  
B. STEWART,**

*Petitioners,*

*vs.*

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,**

*Respondents*

**CONSOLIDATED BRIEF FOR PETITIONERS**

**RAPHAEL G. URICIOLO, pro se,**

**CHARLES H. HOUTON,**

**PHINEAS INDRIETZ,**

**SPOTTSWOOD W. ROBINSON, III,**

*Attorneys for Petitioners.*

**Date: November 17, 1947.**



## INDEX

	Page
<b>Consolidated Brief for Petitioners</b>	
Opinions Below	1
Jurisdiction	2
Statement of the Case	2
Questions Presented	5
Specification of Errors to Be Urged	6
The Basic Issue	7
Summary of Argument	8
Argument	10
<b>1.</b>	
<b>A. Judicial enforcement, under the law of the District of Columbia, of a restrictive covenant which, solely on the basis of race, (1) forbids a person from acquiring, occupying and selling land; and (2) forbids an owner of land from selling it to any member of the restricted group, violates the due process clause of the Fifth Amendment</b>	10
(1) This Court has protected the rights of both white sellers and nonwhite buyers against legislative racial restrictions	11
(2) The petitioners here have been deprived of their property without due process by the Government, acting in this instance through its judicial arm	16
(3) Judicial action is subject to the Due Process clause	20
(4) Legislative racial restrictions compared to judicial enforcement of racial restrictive covenants	28
(5) Assumed cases showing unconstitutionality of judicial enforcement of both racial restrictive covenants and racial zoning statute	30
(6) The petitioners have not attempted to contract away their constitutional rights	33
(7) Judicial enforcement of racial restrictive covenants is unconstitutional	35
(8) The contentions here urged are not novel legal doctrines. They have been applied by this Court in numerous prior cases in other contexts	37
<b>B. The enforcement of racial restrictive covenants has drastically curtailed the ability of Negroes to secure adequate housing and has hemmed them into slums and ghettos. The covenants have been a direct</b>	

and major cause of enormous overcrowding in the few areas available to Negro residential occupancy, with consequent substantial increase in disease, death, crime, immorality, juvenile delinquency, racial tensions, and economic exploitation from artificially inflated rental and housing costs. They constitute a direct danger to our national unity. In the light of these effects and conditions, the judicial enforcement of restrictive covenants is clearly incompatible with the Due Process clause of the Constitution.

- (1) The Negro population is becoming increasingly urbanized 40
- (2) Community Disorganization Resulting from Restrictive Covenants 42
  - (a) Density, Congestion, "Piling up" of Negroes in ghetto slums 44
  - (b) The Negroes' disproportionate share of substandard housing 51
  - (c) Economic exploitation through inflated Rentals and Housing Costs 58
  - (d) Disease, death, crime, family disorganization, juvenile delinquency 61
  - (e) Race riots and tensions 62
  - (f) Effects on municipal facilities, public institutions, and on the entire community 68
- (3) Negro residential occupancy or proximity does not "depreciate property values." Use of proper occupancy standards, rather than racial restrictive covenants, is the way to protect neighborhood property values 71
- (4) Broad Implications of These Cases; International, National, Moral 73
  - (a) International Importance 85
  - (b) Racial Restrictive covenants are widespread, capricious, extreme; they create a divisive, caste society, and constitute a direct danger to our national unity 85
  - (c) Religious and moral aspects 90
- (5) This Court's decision declaring racial restrictive covenants unenforceable will not cause revolutionary disturbances 95

# INDEX

iii

Page

C. This Court has not heretofore decided the questions which are here presented—Analysis of *Corrigan v. Buckley*, 271 U. S. 323 (1926).

98

II. Judicial enforcement of a restrictive covenant which, solely on the basis of race, forbids a citizen from purchasing and occupying land for residential purposes, violates section 1978, Revised Statutes (8 U.S.C. sec. 42)

106

III. Judicial enforcement of a restrictive covenant which, solely on the basis of race, forbids a person from purchasing and occupying land violates a treaty of the United States, namely, the Charter of the United Nations

108

IV. Racial restrictive covenants and their enforcement by the courts are so plainly contrary to the public policy of the United States that the judgments of the court below should be reversed by this Court

111

(A) Declaration of Independence

112

(B) Constitution

112

(C) Statutes

112

(D) Treaties and International Agreements

115

(E) Decisions of this Court

117

(F) The President

118

(G) Effect of Covenants

120

V. Because of the discriminatory character and inequity of the restrictions on the sale, purchase and occupancy of land solely on the basis of race, no court of equity should lend its aid to the enforcement of such restrictions by issuance of injunction

121

VI. Racial restrictive covenants are unreasonable restraints on alienation of property and violate the fundamental principle of our economic society that all property be freely alienable. Hence, such covenants should be held void and unenforceable

124

VII. Covenants restricting the USE of land are entirely different from covenants which, solely on the basis of race or creed, restrict the OCCUPANCY of land. Decisions upholding the former are therefore irrelevant to the latter type of covenant

127

A. Constitutional differences

127

B. Different purposes and application

128

C. Different effects on property rights

128

D. Different effects on human rights

129

E. Different bases

129

VIII. World War II

131

Conclusion

132

## APPENDIX

Charts No.	Page
MAPS OF DISTRICT OF COLUMBIA SHOWING DISTRIBUTION OF:	
1. Percent of Population Negro, 1940	134
2. Percent of Dwelling Units with 1.51 or more Persons per room, 1940	135
3. Tuberculosis Death Rate (All-Forms), 1940	136
4. Infant Mortality Rate, 1937	137
5. Total Arrests Made by Metropolitan Police During 1937 of Persons under 17 Years of Age	138
6. Juvenile Court-Delinquent Children Committed to Institutions or Placed on Probation during 1937	139
7. Number of Children 3 to 18 years of age, inclusive, 1936-1938	140
8. St. Elizabeth's Hospital Intake (Patients Admitted), 1937	141

MAPS OF CHICAGO, ILLINOIS, SHOWING DISTRIBUTION OF:	
9. Percent of Total Population Negro, 1940	144
10. Tuberculosis (all types) Mortality Rate, 1931-1937	145
11. Pneumonia (all types), Mortality Rate, 1933-1947	146
12. Juvenile Delinquency Rates	147
13. Average Insanity Rate	148

## TABLE OF AUTHORITIES CITED

## Cases:

<i>Allen v. Oklahoma City</i> , 175 Okla. 421, 52 P. (2d) 1054	15
<i>American Federation of Labor v. Swing</i> , 312 U. S. 321	26, 39
<i>Anderson v. Auseth</i> , L. A. 19,759, Superior Ct. of Calif. in Los Angeles, Dec. 1945	17, 105
<i>Ashcraft v. Tennessee</i> , 322 U. S. 143	24
<i>Atlantic Coast Line R. R. Co. v. Pease</i> , 283 U. S. 401	98
<i>Bakery Drivers Local v. Wohl</i> , 315 U. S. 769	26
<i>Barnard's Lessee v. Bailey</i> , 2 Har. (Del.) 56 (1836)	126
<i>Beasley v. Texas &amp; Pacific Ry. Co.</i> , 191 U. S. 492	120, 121
<i>Block v. Hirsh</i> , 256 U. S. 135	93
<i>Bowen v. City of Atlanta</i> , 159 Ga. 145, 125 S.E. 199	45
<i>Bridges v. California</i> , 314 U. S. 252	24
<i>Brinkerhoff-Paris Trust &amp; Savings Co. v. Hill</i> , 281 U. S. 673	25
<i>Brown v. Mississippi</i> , 297 U. S. 278	24
<i>Buchanan v. Warley</i> , BDE U. S. 41	11, 14, 15, 17, 30, 32, 33
	35; 36, 39, 79, 83, 97, 99, 167, 112, 125, 126, 127, 130
<i>Cafeteria Union v. Angelos</i> , 320 U. S. 293	26
<i>Cantwell v. Connecticut</i> , 310 U. S. 296	24
<i>Carter v. Texas</i> , 177 U. S. 442	23
<i>Cary v. Curtis</i> , 44 U. S. (3 How.) 236	37
<i>Central Land Co. v. Laidley</i> , 159 U. S. 103	101
<i>Chambers v. Florida</i> , 309 U. S. 227	24

# INDEX

V

	Page
<i>Chicago, B. &amp; O. R. Co. v. Chicago</i> , 166 U. S. 226	22, 27
<i>Chy Lung v. Freeman</i> , 92 U. S. 275	89
<i>City of Richmond v. Deans</i> , 281 U. S. 704	11, 14, 17, 36, 39, 127
<i>ibid.</i> , 37 Fed. 172	15
<i>Civil Rights Cases</i> , 109 U. S. 3	13, 18, 19, 20, 33, 107
<i>Clarke v. Aiken</i> , 278 F. 21	122
<i>Clinard v. City of Winston-Salem</i> , 217 N. Car. 119, 6 S.E. (2d) 867	-15
<i>Coombs v. Lennor Realty Co.</i> , 111 Me. 178, 88 Atl. 477	122
<i>Corrigan v. Buckley</i> , 271 U. S. 323,	9, 98, 99, 100, 101, 102, 103, 105, 120, 123
<i>Cowell v. Springs Co.</i> , 100 U. S. 55	127, 129
<i>Craig v. Harney</i> , 331 U. S. 367	24
<i>Crist v. Henshaw</i> , 196 Okla. 168, 163 Pac. (2d) 214	31
<i>Delmar Jockey Club v. Missouri</i> , 210 U. S. 324	101
<i>DeMeerleer v. Michigan</i> , 329 U. S. 663	23
<i>Dr. Miles Medical Co. v. Park &amp; Sons Co.</i> , 220 U. S. 373	121
<i>Drivers Union v. Meadowmoor Co.</i> , 312 U. S. 287	27
<i>Edwards v. California</i> , 314 U. S. 160	117
<i>Erie R. Co. v. Tompkins</i> , 304 U. S. 64	35
<i>Ex Parte Virginia</i> , 100 U. S. 339	20, 21, 23
<i>Ex Parte Yarbrough</i> , 110 U. S. 651	115
<i>Fairchild v. Raines</i> , 25 Adv. Calif. 812, 151 P. (2d) 260	123
<i>Farrington v. Tokushige</i> , 273 U. S. 284	16, 20
<i>Fiske v. Kansas</i> , 274 U. S. 380	23
<i>Frank v. Mangum</i> , 237 U. S. 309	24
<i>French v. Barber Asphalt Paving Co.</i> , 181 U. S. 324	16, 20
<i>Gandolfo v. Hartman</i> , 49 F. 181	37, 104, 105, 110, 120
<i>Garber v. Tushin, Equity #12894, Circuit Ct. of Montgomery County, Maryland (1947)</i>	29, 91, 92
<i>Geofroy v. Riggs</i> , 133 U. S. 258	106
<i>Glover v. City of Atlanta</i> , 148 Ga. 285, 96 S.E. 562	15
<i>Gospel Spreading Association, Inc., v. Bennetts</i> , 79 U. S. App. D. C. 352, 147 F. (2d) 878	5
<i>Grady v. Garland</i> , 67 App. D. C. 73, 89 F. (2d) 817	45, 98
<i>Griffin v. Griffin</i> , 327 U. S. 220	25
<i>Hadacheck v. Los Angeles</i> , 239 U. S. 394	127
<i>Hall v. DeCuir</i> , 95 U. S. 485	13, 107
<i>Hansberry v. Lee</i> , 311 U. S. 32	26, 98
<i>Harmon v. Taylor</i> , 273 U. S. 668	11, 14, 15, 17, 31, 32, 35, 36, 39, 127, 130
<i>Harrisonville v. Dickey Clay Co.</i> , 289 U. S. 334	122
<i>Hawk v. Olson</i> , 326 U. S. 271	23
<i>Heiner v. Donnan</i> , 285 U. S. 312	16, 20
<i>Hennessey v. Woolworth</i> , 128 U. S. 438	121
<i>Hirabayashi v. United States</i> , 320 U. S. 81	117
<i>Holden v. Hardy</i> , 169 U. S. 366	12
<i>Hovey v. Elliott</i> , 167 U. S. 409	27, 28, 35
<i>Hundley v. Gorewitz</i> , 77 App. D. C. 48, 132 F. (2d) 23	106, 123

	Page
<i>Hurd v. Hodge</i> , 162 F. (2d) 233 (1947),	10, 17, 20, 21, 36, 45, 86, 123, 125
<i>Hyer v. Richmond Traction Co.</i> , 168 U. S. 471	120
<i>In re Drummond Wren</i> , 4 Dom. L. R. 674 Ont. Rep. [1945],	89, 91, 92, 93, 111, 116, 120
<i>Iowa-Des Moines Bank v. Bennett</i> , 284 U. S. 239	27
<i>Irvine v. City of Clifton Forge</i> , 124 Va. 781, 97 S.E. 310	15
<i>Jackson v. State</i> , 132 Md. 311, 103 Atl. 910	15
<i>Jamison Coal &amp; Coke Co. v. Goltra</i> , 143 F. (2d) 889	121
<i>Jenne v. Jenne</i> , 271 Ill. 526, 111 N.E. 540	126
<i>Jones v. Buffalo-Creek Coal Co.</i> , 245 U. S. 328	102
<i>Kennett v. Chambers</i> , 55 U. S. (14 How.) 38	110, 120
<i>Korematzer v. United States</i> , 323 U. S. 214	117
<i>Kraemer v. Shelley</i> , — Mo. —, 198 S.W. (2d) 679	105
<i>Leeper v. Texas</i> , 139 U. S. 462	22
<i>Liberty Annex Corp. v. City of Dallas</i> , 289 S.W. 1067, aff'd 295 S.W. 591, 19 S.W. (2d) 845	15, 32
<i>McCabe v. Atchison, T. &amp; S. F. R. Co.</i> 235 U. S. 151	36
<i>McMullen v. Hoffman</i> , 174 U. S. 639	120
<i>Madison v. Ducktown Sulphur, Copper &amp; Iron Co.</i> , 113 Tenn. 331, 83 S.W. 658	122
<i>Marsh v. Alabama</i> , 326 U. S. 501	23, 38
<i>Martin v. Texas</i> , 200 U. S. 316	23
<i>Mays v. Burgess</i> , 147 F. (2d) 869	50, 106, 123
<i>Missouri ex rel Gaines v. Canada</i> , 305 U. S. 337	36, 96
<i>Mitchell v. United States</i> , 313 U. S. 80	36
<i>Mooney v. Holohan</i> , 294 U. S. 103	24, 27
<i>Moore v. Dempsey</i> , 261 U. S. 86	34
<i>Morgan v. Virginia</i> , 328 U. S. 373	97
<i>Morton Salt Co. v. G. S. Suppiger Co.</i> , 314 U. S. 488	122
<i>Myers v. United States</i> , 272 U. S. 52	37
<i>Neal v. Delaware</i> , 103 U. S. 370	23
<i>Nielsen v. Johnson</i> , 279 U. S. 47	111
<i>Norcross v. James</i> , 140 Mass. 188, 2 N.E. 946 (1885)	34, 122
<i>Norris v. Alabama</i> , 294 U. S. 587	23
<i>Ogden v. Saunders</i> , 25 U. S. (12 Wheat.) 213	121
<i>Old Wayne Mutual Life Ass'n of Indianapolis v. McDonough</i> , 204 U. S. 8	25
<i>Pearce v. Crocker</i> , No. 508, 294, in Superior Ct. of Calif. in Los Angeles (1947)	91, 92
<i>Pennekamp v. Florida</i> , 328 U. S. 331	24
<i>Pennoyer v. Neff</i> , 95 U. S. 714	25
<i>Pierce Oil Corp. v. City of Hope</i> , 248 U. S. 498	127
<i>Pope Mfg. Co. v. Gormally</i> , 144 U. S. 224	121, 122
<i>Postal Telegraph Cable Co. v. City of Newport</i> , 247 U. S. 464	26
<i>Powell v. Alabama</i> , 287 U. S. 45	23
<i>Queensborough Land Co. v. Cazeaux</i> , 135 La. 274, 67 So. 641	97, 104
<i>Raymond v. Chicago Union Traction Co.</i> , 207 U. S. 20	27

# INDEX

vii

	Page
<i>Reinman v. Little Rock</i> , 237 U. S. 171	127
<i>Rogers v. Alabama</i> , 192 U. S. 226	23
<i>Santovince v. Egan</i> , 284 U. S. 30	110
<i>Scott v. McNeal</i> , 154 U. S. 34	25
<i>Screws v. United States</i> , 325 U. S. 91	27
<i>Sipes v. McGhee</i> , 316 Mich. 614, 25 N.W. (2d) 638	105
<i>Skiriotes v. Florida</i> , 313 U. S. 69	24
<i>Smith v. Allwright</i> , 321 U. S. 649	38, 97
<i>Smith v. Texas</i> , 311 U. S. 128	117
<i>Snowden v. Hughes</i> , 321 U. S. 1	27
<i>Spencer Chapel Methodist Episcopal Church v. Brogan</i> , 104 Okla. 123, 231 Pac. 1074	31
<i>Steele v. Louisville &amp; Nashville R. R. Co.</i> , 323 U. S. 192	38, 117
<i>Talbott v. Silver Bow County</i> , 139 U. S. 438	106
<i>Texas &amp; Pac. Ry. Co. v. Marshall</i> , 136 U. S. 393	121, 122
<i>Thomas v. Collins</i> , 323 U. S. 516	23
<i>Thornhill v. Alabama</i> , 310 U. S. 88	39
<i>Title Guarantee &amp; Trust Co. v. Garrott</i> , 42 Calif. App. 153, 183 Pac. 470	105
<i>Tomkins v. Missouri</i> , 323 U. S. 485	23
<i>Trustees of the Monroe Avenue Church of Christ v. Perkins</i> , No. 153, October Term, 1947, United States Supreme Court	91
<i>Twining v. New Jersey</i> , 211 U. S. 78	16, 20, 24
<i>Tyler v. Harmon</i> , 158 La. 439, 104 So. 200; 160 La. 943, 107 So. 704	14, 31, 130
<i>United States v. California</i> , 331 U. S. —, 67 Sup. Ct. 1658	89
<i>United States v. Carver</i> , 260 U. S. 482	98
<i>United States v. Classic</i> , 313 U. S. 299	27
<i>United States v. Cruikshank</i> , 92 U. S. 542	22
<i>United States v. Morris</i> , 125 F. 322	115
<i>United States v. Pink</i> , 315 U. S. 203	14, 26, 89, 110
<i>United States v. Waddell</i> , 112 U. S. 76	115
<i>Village of Euclid v. Ambler Realty Co.</i> , 272 U. S. 365	127, 129
<i>Virginia v. Rives</i> , 100 U. S. 313	21
<i>White v. Texas</i> , 310 U. S. 530	24
<i>Willard v. Taylor</i> , 75 U. S. (8 Wall.) 557	122
<i>Williams v. Kaiser</i> , 323 U. S. 471	23
<i>Wright v. Drye</i> , Superior Ct. of Calif. in Los Angeles, Oct. 1947	105
<i>Yick Wo v. Hopkins</i> , 118 U. S. 356	117

## UNITED STATES CONSTITUTION AND STATUTES

Declaration of Independence	111, 112, 120
Article VI	108
Fifth Amendment	5, 6, 8, 16, 20, 26, 99, 100, 112, 120
Thirteenth Amendment	12, 13, 99, 100, 107, 112
Fourteenth Amendment	8, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 99, 100, 104, 107, 112, 113, 120

	Page
Act of July 2, 1864, (13 Stat. 351)	113
Act of April 9, 1866, (14 Stat. 27)	13, 107, 112, 113
Act of June 21, 1866, (14 Stat. 66, 67)	113
Act of January 25, 1867, (14 Stat. 379)	113
Act of March 2, 1867, (14 Stat. 457)	113
Act of May 31, 1870, (16 Stat. 140)	13, 107, 113
Act of March 1, 1875, (18 Stat. 336)	114
Act of June 30, 1879, (21 Stat. 44)	114
Act of March 4, 1909, (35 Stat. 1088, 1092)	114
Act of March 3, 1911, (36 Stat. 1087, 1159)	99
Act of February 28, 1919, (40 Stat. 1189, 1201)	114
Act of March 31, 1933, (48 Stat. 22)	114
Act of June 28, 1937, (50 Stat. 320)	114
Act of June 29, 1937 (50 Stat. 352, 357)	114
Act of June 21, 1938, (52 Stat. 809, 815)	114
Act of June 27, 1939, (53 Stat. 855)	113
Act of June 30, 1939, (53 Stat. 927)	114
Act of August 2, 1939, (53 Stat. 1147)	114
Act of June 26, 1940, (54 Stat. 574)	114
Act of June 26, 1940, (54 Stat. 611)	114
Act of November 26, 1940, (54 Stat. 1211, 1214)	114
Act of June 28, 1941, (55 Stat. 361)	114
Act of July 1, 1941, (55 Stat. 396)	114
Act of July 1, 1941, (55 Stat. 466)	114
Act of July 2, 1942, (56 Stat. 562)	114
Act of July 2, 1942, (56 Stat. 634)	114
Act of June 15, 1943, (57 Stat. 153)	113
Act of June 28, 1944, (58 Stat. 533)	114
Act of December 22, 1944, (58 Stat. 853, 874)	114
Act of July 17, 1945, (59 Stat. 473)	114
Act of August 13, 1946, (60 Stat. 999)	114
Criminal Code, Sec. 19	115
Criminal Code, Sec. 20	114
Criminal Code, Secs. 21 through 26	115
D. C. Code (1940) Title 11, Secs. 305, 306	37
D. C. Code (1940) Title 11, Sec. 1101	16
Judicial Code, Sec. 24	37
Judicial Code, Sec. 240(a)	2
Judicial Code, Sec. 250	99, 102
Revised Statutes:	
Sec. 858	113
Sec. 1078	113
Sec. 1860	113
Sec. 1977	12, 19, 33, 99, 100, 101, 113
Sec. 1978	5, 6, 9, 12, 13, 33, 99, 100, 101, 106, 107, 112, 113
Sec. 1979	99, 100, 101
Sec. 2004	113
Sec. 2302	113

# INDEX

ix

	Page
Sec. 5508	115
Sec. 5510	114
Sec. 5518	115
Sec. 5528 through 5532	115
5 U.S.C. 681e	114
8 U.S.C. Sec. 31	113
8 U.S.C. Sec. 41	12, 13, 19, 33
8 U.S.C. Sec. 42	5, 6, 9, 12, 13, 33, 106, 107, 112
8 U.S.C. Sec. 44	114
16 U.S.C. Sec. 584g	114
18 U.S.C. Sec. 51	115
18 U.S.C. Sec. 52	114
18 U.S.C. Secs. 54 through 59	115
18 U.S.C. Sec. 61e	114
28 U.S.C. Sec. 41(1)	37
22 U.S.C. Sec. 807	114
28 U.S.C. Sec. 292	113
28 U.S.C. Sec. 347(a)	2
28 U.S.C. Sec. 503	16
42 U.S.C. Sec. 1533	114
43 U.S.C. Sec. 184	113
48 U.S.C. Sec. 1460	113
49 U.S.C. Sec. 752	113
50 U.S.C. App. Sec. 1451	113

## EXECUTIVE ORDERS

No. 2000, July 28, 1914	119
No. 7915, June 24, 1938 (3 F. R. 1519)	119
No. 8587, November 7, 1940 (5 F. R. 4445)	119
No. 8802, June 25, 1941 (6 F. R. 3109)	119
No. 8823, July 18, 1941 (6 F. R. 3577)	119
No. 9346, May 27, 1943 (8 F. R. 7183)	119
Letter of November 5, 1943 interpreting No. 9346 (8 F. R. 15419)	119
No. 9664, December 18, 1945 (10 F. R. 1530)	119
No. 9808, December 5, 1946 (11 F. R. 14153)	119

## TREATIES AND INTERNATIONAL AGREEMENTS

Atlantic Charter	116
Bulgaria, Treaty of Peace (93 Cong. Rec. 6573, 6578)	116
Chapultepec, Resolutions accompanying Act of	116
Hungary, Treaty of Peace (93 Cong. Rec. 6578, 6584)	116
Italy, Treaty of Peace (93 Cong. Rec. 6307, 6567)	116
Potsdam Agreement	115
Rumania, Treaty of Peace (93 Cong. Rec. 6567, 6573)	116
Charter of the United Nations, Preamble	8, 109
Charter of the United Nations, Articles 55(c), 56 (59 Stat. 1031),	5, 6, 9, 108, 115

## TEXTS, PERIODICALS AND MISCELLANEOUS

	Page
Abrams, Charles, "Homes for Aryans Only," Commentary (May, 1947)	90, 94
Acheson, Dean, Letter to the Fair Employment Practice Committee	88
Aldrich, Winthrop W., Chairman, Board of Trustees, American Heritage Foundation, The Evening Star, Washington, D. C., September 29, 1947	111, 112
Alston, John C., "Negro Housing in Columbus, Ohio" (1946)	62
American Law Institute, Restatement of the Law of Contracts, Vol. 2, Secs. 512, 591 (1932)	121
American Law Institute, Restatement of the Law of Judgments, sec. 11, comment C	25, 26
American Law Institute, Restatement of the Law of Property, pp. 2379-80 (1944)	124
American Law Institute, "Statement of Essential Human Rights," 243 Annals of the American Academy of Political and Social Science, 18, 24 (Jan. 1946)	109
American Unitarian Association, General Conference, Resolutions	95
Architectural Forum, "Good Neighbors" (January, 1947)	48, 82, 105
Barnes, Harry Elmer, "Society in Transition" (1939)	65
Beebler, George W., Jr., "Colored Occupancy Raises Values," The Review of the Society of Residential Appraisers (September, 1945)	61, 75
Blandford, John B., Jr., "The Need for Low-Cost Housing," Address before Annual Conference, National Urban League, Columbus, Ohio, October 2, 1944	45, 46
Bonnet, Henri, "Human Rights Are Basic to Success of United Nations," 243 Annals of the American Academy of Political and Social Science (January, 1946)	110
Cayten, Horace, "Negro Housing in Chicago," Social Action (April 15, 1940)	48
Chevy Chase Land Co. of Montgomery County, Md., Covenants of, on block 7, section 5-A, Chevy Chase, Maryland, Plat 1371, recorded in Plat Book 22	91
Chicago Defender (November 1, 1947) p. 1	105
Chicago Housing Authority, "The Tenth Year of the Chicago Housing Authority," Report for fiscal year ending June 30, 1947	48
City of Chicago, City Planning in Race Relations, Proceedings of the Mayor's Conference on Race Relations (February, 1944)	47
Covenant covering Bannockburn Heights development, Maryland, involved in <i>Garber v. Tushin</i>	91
Covenants covering the Prospect Hills Subdivision in Roanoke, Virginia	90
D. C. Federation of Citizens Associations, "District of Columbia Citizen" (July 3, 1947)	70
Declaration of covenant dated November 17, 1936, recorded by Waldo N. Ward on November 25, 1936, Liber 648, folio 192,	

	Page
affecting lots in Northwood Park, Montgomery County, Maryland	91
16 Department of State Bulletin No. 413, pp. 1077, 1080, 1081, 1082 (June 1, 1947)	116
Department of State Publication 2497, Conference Series 85, Report of the Delegation of the United States of America to the Inter-American Conference on Problems of War and Peace, Mexico City, Mexico, February 21 to March 8, 1945	116
Department of State, Publication 2774, European Ser. 24, "Making The Peace Treaties, 1941-1947" (1947)	116
District of Columbia Tuberculosis Association, "Facts and Figures on Tuberculosis in D. C."	63
Doebele, John, "Covenant to Create Slums," 75 America 90 (Catholic Review of the Week) (May 4, 1945)	95
Drake, St. Clair and Cayton, Horace, "Black Metropolis, A Study of Negro Life in a Northern City" (1945),	29, 48, 57, 62, 69, 75, 76, 93, 94
Fair Employment Practice Committee, Final Report, June 28, 1946	87, 88
Federal Council of Churches of Christ in America, Biennial Report (1946)	70, 95
Federal Emergency Administration of Public Works, "Urban Housing" (1935)	72
Federal Housing Administration, Real Property Inventories	60
Federal Works Agency, "Postwar Urban Development" (1944)	72
Frankfurter, Felix, and Greene, Nathan, "The Labor Injunction" (1930)	37
Gelhorn, Contracts and Public Policy, 35 Column L. Rev. 678	121
General Council Congregational Christian Churches of the United States, June, 1946	95
Goldman, Hymen, President Jewish Community Council of Washington, Letter to The Washington Post (October 7, 1947)	96
Gray, Restraints on Alienation, secs. 1-21 (2d Ed., 1895)	124
Hayes, Dorsha B., "Chicago" (1944)	69
Housing Authority of City of St. Petersburg, Fourth Annual Report, "Management," in Housing Management Bulletin, Vol. 6, January 20, 1943	80
Hoyt, Homer, "The Structure and Growth of Residential Neighborhoods in American Cities" (Federal Housing Administration, 1939)	57, 98
Investigation of the Program of the National Capital Housing Authority: Hearings before a Sub-Committee of the Committee on the District of Columbia, United States Senate, 78th Cong., 2nd sess., on S. Res. 184 and S. 1699 (1944)	50, 51
Jahn, Julius, Schmid, Calvin F., and Schrag, Clarence, "The Measurement of Ecological Segregation," 12 American Sociological Review 293, 302-303 (June, 1947)	44

	Page
Jenks, Wilfred C., "The Five Economic and Social Rights," 243 Annals of the American Academy of Political and Social Science, 40, (January, 1946)	109
Johnson, Guy B., "The Negro and Crime," 217 Annals of the Ameri- can Academy of Political and Social Science (September, 1941)	65
Journal of Housing, "Phillip M. Klutznick Resigns as FPHA Com- missioner" (July, 1946)	46
Kahen, Harold I., "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 U. of Chi. L. Rev. 198 (Feb- ruary, 1945)	10, 11, 18, 42, 75, 104, 123
Kenny, Hon. Robert W., "The Inter American Bar and Racial Equality," 4 Lawy. Guild Rev., No. 4 (July-August, 1944)	88
Kuhn, Ferdinand, Jr., "Working Backstage at U. S. Expense—Red 'Tolerance' Pose is Winning Colonials," The Washington Post, Sec. II, p. 1B, Sunday, November 2, 1947	88
Lee, Alfred M., and Humphrey, Norman D., "Race Riot" (1943)	68
Lohman, Joseph D., "The Police and Minority Groups," Manual of Chicago Park District, Chicago, Ill., 1947	66, 69
Lohman, Joseph D., and Embree, Edwin R., "The Nation's Capital," 36 Survey Graphic 33 (January, 1947)	58, 89
McGovney, D. O., "Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional," 33 Calif. L. Rev. 5 (1945)	10, 18, 91
Martin, Arthur T., "Segregation of Residences of Negroes," 32 Mich. L. Rev. 721 (1934)	123, 124
Merriam, Charles E., "The Content of an International Bill of Rights," 243 Annals of the American Academy of Political and Social Science, 11 (Jan. 1946)	109
Meyer, Agnes E., "Negro Housing—Capital Sets Record for U. S. in Unalleviated Wretchedness of Slums," The Washington Post, Sec. II, pp. 1B and 6B, February 6, 1944	41, 55, 58, 59, 81, 82
Miller, Loren, "Covenants for Exclusion," 36 Survey Graphic 541 (October, 1947)	59
Miller, Loren, "The Power of Restrictive Covenants," 36 Survey Graphic 46 (January, 1947)	90
Miller, Loren, "Race Restrictions on Ownership or Occupancy of Land," 7 Lawy. Guild Rev. 99 (May-June, 1947)	10, 17, 18, 91
Moron, Alonzo G., "Where Shall They Live," The American City, April, 1942	62
Myrdal, Gunnar, "An American Dilemma, The Negro Problem and Modern Democracy" (1944)	49, 59, 61, 75, 85, 86
National Association of Real Estate Boards, "Realtor Work for Negro Housing" (October 24, 1944)	62, 76, 77, 78, 79
National Catholic Welfare Conference, Washington, "Seminar in Negro Problems in the Field of Social Action" (1946)	95
National Housing Agency, Summary and Digest of the Orientation Conference for Racial Relations Advisers (Oct. 28-Nov. 2, 1946)	47

# INDEX

xiii

	Page
National Urban League, "Racial Problems in Housing," Bulletin No. 2 (Fall, 1944)	74, 85
Navin, Robert Bernard, "Analysas of a Slum Area" (1934)	72
"Nazi Conspiracy and Aggression," Government Printing Office (1946)	92
O'Brien, Howard Vincent, Chicago Daily News of January 12, 1943 (in Housing Management Bulletin, January 20, 1943)	80
Oleott's Land Value Blue Book for Chicago	75
Pederson, Dorothy, "Public Housing Management," The Journal of Property Management (September, 1942)	79
Pennsylvania State Temporary Commission, Report of, on Conditions of the Urban Colored Population (1943)	59
Peterson, Virgil W., "Crime Conditions in Fifth Police District," in <i>Criminal Justice</i> , Journal of the Chicago Crime Commission (May, 1946)	66
Philadelphia Evening Bulletin, Editorial (In Housing Management Bulletin, January 20, 1943)	80
President Roosevelt, Message of August 21, 1941, House Doc. 358, 77th Cong., 1st session	116
President Roosevelt, Message of January 11, 1944, House Doc. No. 377, 78th Cong., 2nd session, reprinted in <i>Voices of History, 1944-45</i> (Nathan Ausubel, ed., Gramercy Publ. Co., N. Y. (1945)	118
President Truman, Address of, 38th Annual Conference of National Association for the Advancement of Colored People (p. 4, The Washington Post, June 30, 1947); (93 Cong. Rec. A-3505, July 2, 1947)	118
President Washington's Letter of August, 1790 to the Hebrew Congregation, Newport, R. I., 30 Washington's Letter Books 19	118
President's Committee on Civil Rights, Report of, "To Secure These Rights," Washington (October 29, 1947)	40, 44, 45, 86, 88, 89, 119
President's Conference on Home Building and Home Ownership, Report on "Negro Housing" (1932)	59, 64, 65, 71
Reckless, Walter C., "Vice in Chicago" (1933)	71
Report of the Delegation of the United States of America to the Inter-American Conference on Problems of War and Peace, Mexico City, Mexico, February 21 to March 8, 1945, The New York Times, March 7, 1945	116
Rhode Island Citizens Association, "Neighborhood News" (January, 1947)	70
Richman, Rabbi Paul, Washington B'nai B'rith, Anti-Defamation League, The Evening Star, Washington, D. C., p. A-14 (September 13, 1947)	96
Robinson, Corienne K., "Racial Factors in Rent Payments, Property Maintenance, and Property Values as Reflected in Public Housing Experience" (1943)	81
Robinson, Corienne K., "Relationship Between Condition of Dwellings and Rentals, by Race," 22 Journal of Land & Public Utility Economics 296, 301, 302 (August, 1946)	49, 60, 61, 62

	Page
Rumney, Jay and Shuman, Sara, "The Cost of Slums in Newark," Housing Authority of the City of Newark (1946)	72
Seavey, Warren A., "International Protection of Basic Interests," 243 Annals of the American Academy of Political and Social Science, 50, 52 (Jan. 1946)	131
Shaw, Clifford R., and McKay, Henry D., Juvenile Delinquency and Urban Areas (1942)	64
Sheil, Bishop Bernard J., "Restrictive Covenants versus Brotherhood," Address at Conference for the Elimination of Restrictive Covenants held in Chicago, May 10-11, 1946	95
Shuman, Sara, "Differential Rents for White and Negro Families," Journal of Housing (August, 1946)	49, 61
Steinbrink, Justice Mejer, National chairman, Anti-Defamation League, B'nai B'rith, The Washington Post, p. 2B (October 7, 1947)	96
Stern, Oscar I., "Long Range Effect of Colored Occupancy," The Review of the Society of Residential Appraisers (January, 1946)	73, 74
Sterner, Richard, "The Negro's Share" (1943)	49, 60, 61
Stettinius, Edward R., Jr., "Human Rights in the United Nations Charter," 243 Annals of the American Academy of Political and Social Science, 1 (Jan., 1946)	109
Survey Graphic, "Color: Unfinished Business of Democracy," vol. 31 (November, 1942)	86
The American City, "Restrictive Covenants Directed Against Purchase or Occupancy of Land by Negroes" (May, 1947)	48
The Capital Veteran, Newspaper of American Veterans Committee, Washington, D. C., p. 2 (October, 1947)	50
The Evening Star, August 21, 1947, "Russian Newspaper Hits Treatment of Negroes Here" (Associated Press)	86
The Evening Star, September 13, 1947, p. A-14	29, 96
The Evening Star, September 23, 1947, p. A-4	94
The Evening Star, October 7, 1947, Editorial page	94, 96
The Evening Star, October 8, 1947, p. A-6	94
The Evening Star, October 14, 1947, p. A-6	94
The Evening Star, October 16, 1947, p. A-6	94
The Evening Star, October 18, 1947, p. A-7	95
The Evening Star, October 21, 1947, p. A-14	94
The Evening Star, November 9, 1947, pp. 1, 4m, A-19	94
The Negro Handbook (1946-47) (F. Murray, ed.)	17
The New York Times, "Missionaries of Prejudice," p. 24, June 2, 1947	86
The New York Times, October 30, 1947, p. C. 14	119
The New York Times, November 13, 1947, pp. 13, 15	89
The Washington Post, Letter of Ethel Graham-Greene, Editorial page, October 25, 1947	93
The Washington Post, September 17, 1947, pp. 1, 3	29, 91
The Washington Post, September 18, 1947, p. 1	71, 94
The Washington Post, October 15, 1947, pp. 1, 11	94

	Page
The Washington Post, Sunday, November 9, 1947, pp. 1 and 4 M	70, 94, 96
The Washington Post, November 11, 1947, pp. 1, 8	120
The Washington Post, November 13, 1947, p. 11	89
United Nations, Resolution of General Assembly, 48th plenary meeting, 19 November, 1946, Journal of the United Nations, No. 75, Supple. A-64, Add: 1	115
U. S. Bureau of the Census, Censuses of 1910, 1920, 1930 and 1940, 41, 42, 43, 52, 53, 54, 55, 56, 57, 58, 60	
U. S. Bureau of the Census, Census of 1940, Housing statistics	41
U. S. Bureau of the Census, Current Population Reports, Housing Series P-71, No. 1, July 14, 1947	52, 55, 56, 60
U. S. Bureau of the Census, Current Population Reports (Population Characteristics, Series P-21, No. 1, July 23, 1947	52, 55, 56
U. S. Bureau of the Census, "Housing—General Characteristics, District of Columbia," Census of 1940, Tables 6, 8, and 9	41, 51, 60
U. S. Bureau of the Census, Special Censuses, 1945, 1946	43
U. S. Bureau of the Census, "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C., Metropolitan District" (Population Hvet—No. 84, February 4, 1947)	56
Velie, Lester, "Housing: The Chicago Racket," <i>Colliers</i> , p. 112 (October 26, 1946)	61, 75
Velie, Lester, "Housing: Detroit's Time Bomb," <i>Colliers</i> (November 23, 1946)	73, 75, 85
Walker, Mabel L., "Urban Blight and Slums" (1938)	72
"Washington—A Plan for Civic Improvements, 1947" (Report Prepared for Commissioners of the District of Columbia by Citizens Planning Committee, May 15, 1947), p. 98	42
Washington Board of Trade, "City Planning," July, 1947	41, 42
Washington, D. C. Council of Social Agencies, "Social Survey—Report on Racial Relations" (November, 1946)	41
Washington Real Estate Board, "Code of Ethics," sec. 5, par. 15	94
Weaver, Robert C., "Community Action Against Segregation," 13 Social Action (January 15, 1947), publ. by Council for Social Action of the Congregational Christian Churches	49, 71, 85
Weaver, Robert C., "Hemmed In," American Council on Race Relations, Chicago (1945)	70, 85, 93
Weaver, Robert C., "Housing in a Democracy," 244 Annals of the American Academy of Political and Social Science (March, 1946)	49, 59, 85
Weaver, Robert C., "Northern Ways," 36 Survey Graphic (January, 1947)	71
Weaver, Robert C., "Planning for More Flexible Land Use," 23 Journal of Land & Public Utility Economics 29 (February, 1947)	49, 73
Weaver, Robert C., "Race Restrictive Housing Covenants," 20 Journal of Land & Public Utility Economics 183 (August, 1944)	49, 74

	Page
Weaver, Robert C., "A Tool for Democratic Housing," <i>Crisis</i> (February, 1947)	49, 85
Weaver, Robert C., "Whither Northern Race Relations Committee," <i>Phylon</i> , p. 211 (Third Quarter, 1944)	49
White House News Release, August 2, 1945, Part III, A 4, reprinted in <i>Voices of History, 1945-46</i> (Nathan Ausubel, Ed., Gramercy Publishing Co., N.Y., 1946)	115
Williston on Contracts (Rev. Ed. 1937), Secs. 1652, 1652A, 1653	121
Wood, Edith Elmer, "Slums and Blighted Areas in the United States" (1935)	72
Woofter, T. J., Jr., "Negro Problems in Cities" (1928), 42, 59, 61, 71, 73, 74, 75	
Woofter, T. J., Jr., "The Status of Racial and Ethnic Groups," in <i>Recent Social Trends in the United States</i> , ch. 11, p. 567 (1933)	42
Wright, Richard, and Roskam, Edwin, "Twelve Million Black Voices" (1941)	59
Wyatt, Wilson, Letter to Conference for the Elimination of Restrictive Covenants, Held in Chicago, May 10-11, 1946	46

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1947**

**No. 290**

**JAMES M. HURD AND MARY I. HURD,**

*Petitioners,*

*vs.*

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DERITA, VICTORIA DERITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,**

*Respondents*

**No. 291**

**RAFAEL G. URCIOLO, ROBERT H. ROWE, ISABELLE J. ROWE,  
HERBERT B. SAVAGE, GEORGLA N. SAVAGE AND PAULINE  
B. STEWART,**

*Petitioners,*

*vs.*

**FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DERITA, VICTORIA DERITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,**

*Respondents*

**CONSOLIDATED BRIEF FOR PETITIONERS**

**Opinions Below**

The Opinion of the Court of Appeals (R. 417-432) is reported in 162 F. (2d) 233. The District Court's Findings of Fact, Conclusions of Law and Judgment in *Hurd v.*

*Hodge et al.* (No. 290) are on pages 379-385 of the Record, and in *Urciolo et al. v. Hodge et al.* (No. 291) on pages 406-413 of the Record.

### Jurisdiction

The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code. 28 U. S. C. Sec. 347 (a).

The judgments sought to be reviewed were entered by the United States Court of Appeals for the District of Columbia on the 26th day of May, 1947 (R. 433). Motion for rehearing was duly filed and denied on the 23rd day of June, 1947 (R. 434, 453). Consolidated petitions for certiorari, filed on August 22, 1947, were granted on October 20, 1947 (R. —).

### Statement of the Case

In No. 290, petitioners James M. and Mary I. Hurd were the grantees from one Ryan and his wife<sup>1</sup> of a parcel<sup>2</sup> of improved residential land in the 100 block of Bryant Street, Northwest, in the District of Columbia (R. 381).

In No. 291, petitioner Urciolo, a real estate dealer (R. 144) and the owner of 6 parcels<sup>3</sup> in the same block, sold and conveyed 3 of these parcels<sup>4</sup> to petitioners Rowe, Savage and Stewart, respectively (R. 382).

All these grantees now respectively occupy as their homes the property thus conveyed to them (R. 381, 382). The respondents, owners of other lots in the same block, originated these proceedings in the United States District Court for the District of Columbia to secure injunctions to oust

<sup>1</sup> Francis X. Ryan and his wife, the grantors of petitioners Hurd, were subjected to jurisdiction by publication, and never appeared or participated in the case, and are not parties to these petitions.

<sup>2</sup> Premises 116 Bryant Street, Northwest.

<sup>3</sup> Premises 118, 126, 134, 144, 150 and 152 Bryant Street, Northwest.

<sup>4</sup> Premises 118, 134, and 150 Bryant Street, Northwest.

the grantees from their homes because of the existence of a racial restrictive covenant.

In the 100 block of Bryant Street, Northwest, there are 31 lots on the south side of the street improved by 31 dwellings; the north side of the street is the southern boundary of a public park (R. 381). Twenty lots on the south side of the street were sold about 1906 subject to the following covenant in the respective deeds (R. 380):

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person under a penalty of Two Thousand Dollars (\$2,000), which shall be a lien against said property."

The 7 lots here involved are part of these 20 lots. The remaining 11 of the 31 lots on the south side of the street, as well as almost all of the contiguous areas to the south and west, have been owned and occupied by Negroes for many years (R. 381). There have been numerous sales of lots in this block (R. 324-327); several of the lots are no longer owner-occupied, but are rented to tenants (R. 40-41, 278-279). The grantee petitioners acquired their respective parcels of land, not from the original imposer of the covenant, but from persons who were themselves remote grantees (R. 3, 156, 324, 326, 327, 357-358). All of the grantee petitioners had purchased their homes after numerous hardships and prolonged unsuccessful efforts to obtain adequate housing for themselves and their families; the Rowses, Savages and Stewarts had been evicted from their previously rented homes because the owners desired the houses for their own occupancy (R. 216-219, 227-228, 241, 309-310). Several of the petitioners have expended considerable time and money in repairing and improving their present homes (R. 156, 243, 311-312). The residential

property in the area has a 30% greater monetary sale value to Negro purchasers than to white purchasers (R. 261, 263).

The trial court found that both Urciolo (petitioner in No. 291, who appears *pro se*), and the Ryans<sup>5</sup> (who are not petitioners herein) are white (R. 380) and that the other petitioners in both Nos. 290 and 291, including Hurd who has steadfastly claimed to be a Mohawk Indian (R. 238), are Negroes (R. 380). The District Court thereupon rendered judgments (1) declaring null and void the deeds to the grantee petitioners and revesting title in Urciolo and Ryan respectively; (2) permanently enjoining Urciolo and Ryan, respectively, from renting, leasing, selling, transferring or conveying any of the above 7 lots to any Negro or colored person; (3) permanently enjoining the grantee petitioners from renting, leasing, selling, transferring or conveying their above respective premises to any one; and (4) ordering the Negro petitioners "to remove themselves and all of their personal belongings from the land and premises now occupied by them" (R. 384-5, 411-12). The decree made no provision for returning to the grantees the money which they had paid for their homes,<sup>6</sup> or for paying them for the repairs and improvements which they made on their homes.

The Court of Appeals (Justices Clark and Wilbur, K. Miller) affirmed on the basis of its prior decisions, holding that "the appellants have presented no contention that is not answered by those decisions" (R. 418). Justice Edger-

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<sup>5</sup> The Ryans have not appeared or participated in the case and the trial court's finding that they are white is unsupported by any evidence whatever (R. 390, 407).

<sup>6</sup> The money that the Hurds had "invested in this house represents our lifetime savings" (R. 80). Petitioner Stewart paid "for the house \$9,450" (R. 219).

ton dissented (R. 420) on five general<sup>1</sup> grounds, each independent of the other four, namely:

1. "The covenants are void as unreasonable restraints on alienation."

2. "They are void because contrary to public policy."

3. "Their enforcement by injunction is inequitable."

4. "Their enforcement by injunction violates the due process clause of the Fifth Amendment."

5. "Their enforcement by injunction violates the Civil Rights Act." (Rev. Stats., Sec. 1978, 8 U. S. C., Sec. 42.)

Each ground considered by Justice Edgerton was briefed and argued by petitioners in the Court of Appeals.<sup>2</sup>

### Questions Presented

Whether the judicial enforcement, under the law of the District of Columbia, of restrictions on the sale of land by a willing seller and the acquisition and occupancy of land by a willing buyer, where the restriction is based solely on the race or creed of the buyer:

(1) violates the Fifth Amendment to the Constitution;

(2) is contrary to Sec. 1978, Revised Statutes, 8 U. S. C., Sec. 42;

(3) violates a treaty of the United States, namely, the Charter of the United Nations;

<sup>1</sup> Justice Edgerton also dissented on two special grounds: (1) Enforcement of the covenant would defeat its original purposes since Negroes will pay much more than whites for the property and since the neighborhood is no longer white; and (2) the injunctions, against both transfer and occupancy, are broader than the covenant, since the covenant did not forbid use and occupancy. *Gospel Spreading Association, Inc., v. Bennetts*, 79 U. S. App. D. C. 352, 147 F. 2d 878 (R. 422).

<sup>2</sup> A copy of the petitioners' consolidated brief in the Court of Appeals has been lodged with the Clerk of this Court.

- (4) is contrary to the public policy of the United States;
- (5) should be denied because the specific enforcement of such restriction would be of such discriminatory character and so grossly inequitable, that a court of equity should not lend its aid by enforcing the covenant; and
- (6) should be denied because the covenants are void as unreasonable restraints on alienation.

### **Specification of Errors to Be Urged**

The Court of Appeals for the District of Columbia erred:

- (1) In failing to hold that enforcement of the covenant by Federal Court injunction violates the Fifth Amendment of the Constitution.
- (2) In failing to hold that enforcement of the covenant by Federal Court injunction violates Sec. 1978, Revised Statutes, 8 U. S. C. Sec. 42.
- (3) In failing to hold that enforcement of the covenant by Federal Court injunction violates the obligations assumed by the United States in the United Nations Charter.
- (4) In failing to hold that the covenant and its enforcement are void because contrary to the public policy of the United States.
- (5) In failing to hold that the hardship to grantee petitioners from enforcing the covenant would so outweigh the benefit to respondents that a court of equity should not enforce the covenant.
- (6) In failing to hold that the covenant is void as an unreasonable restraint on alienation.
- (7) In failing to reverse the judgments of the District Court for the District of Columbia.

### **The Basic Issue**

These cases involve this fundamental issue: Shall we in the United States have ghettos for racial, religious and other minorities, or even exclude such minorities entirely from whole areas of our country, by a system of judicially enforced restrictions based on private prejudices and made effective through the use of government authority and power?

The extensive area covered by these restrictions and the great number of persons and groups excluded from acquiring and occupying these lands for living space already constitute one of the gravest dangers to our national unity.

During the past two decades, racial restrictive covenants have been extensively imposed in most of the major cities of the nation on a large percentage of all newly constructed dwellings, new residential subdivisions, and existing residential properties contiguous to areas occupied by many of these excluded groups. Negroes have thus far been the major victims of this private, wholesale, and irresponsible "zoning" which, by placing such artificial yet impassable boundaries around the existing areas of Negro occupancy, has barred Negroes of all income groups from occupancy in most suburban areas where new construction has been concentrated, and has forced them into virtual ghettos. Similar restrictions have been directed against persons of Mexican, Greek, Spanish, Armenian, Chinese, Korean, Filipino, Persian, Hindu, Ethiopian, Syrian, Japanese, Arabian and other ancestry, as well as "non-Caucasians", Latin-Americans, Jews, American Indians, Hawaiians, Puerto Ricans, and other groups, irrespective of their American citizenship or the use they would make of the land, and despite our pledge in the United Nations Charter "to practice tolerance and live together in peace".

8

with one another as good neighbors." Preamble, United Nations Charter, 59 Stat. 1035.

These restrictions have been a direct and major cause of enormous overcrowding into slums, with consequent substantial disorganization of family and community life. These effects have not been, and cannot be, in our fluid society, confined to the intended victims of the restrictions; they permeate the community and exert a baneful influence upon the economic, social, moral and physical well-being of all persons, white and black, young and old, rich and poor. They are incompatible with the foundations of our republic and their judicial approbation may well imperil our form of government and our unity and strength as a nation.

### Summary of Argument

Judicial enforcement of a restrictive covenant which, solely on the basis of race, (1) forbids a person from acquiring, occupying and selling land and (2) forbids an owner of land from selling it to any member of the restricted group, is in violation of the due process clause of the Fifth Amendment. This Court has held that the legislative imposition of such restriction is unconstitutional under the due process clause of the Fourteenth Amendment. The guaranty of due process in the Fifth Amendment is similar to that in the Fourteenth Amendment and applies to the District of Columbia. The due process clause applies to judicial action and prohibits governmental action through judicial recognition and enforcement of non-statutory law which denies due process. Both the legislature and the judiciary are arms of the government. A result forbidden by the Constitution to the legislature cannot be achieved through the judiciary. Hence, the judicial enforcement of restrictive covenants, against willing sellers and willing buyers, who have never been parties to the covenant, violates the Constitution.

The enforcement of racial restrictive covenants has drastically curtailed the ability of "non-Aryans" to secure adequate housing and has hemmed them into slums, blighted areas, and ghettos. Racial restrictive covenants have been a direct and major cause of enormous overcrowding in the few areas available to Negro residential occupancy, with consequent substantial increase in disease, death, crime, immorality, juvenile delinquency and racial tensions, increased strains on public facilities and services, and economic exploitation through artificially inflated rental and housing costs. They constitute a direct danger to the American principle of "equality before the law" and to our national unity. In the light of these effects and conditions, the judicial enforcement of restrictive covenants is clearly incompatible with the due process clause of the Constitution.

This Court did not, in *Corrigan v. Buckley*, 271 U. S. 323 (1926) decide the questions which are here presented. The decisions of the courts below, as well as the decisions of State courts since 1926 in cases involving racial restrictive covenants either did not involve the contentions here urged, or were based on erroneous assumptions concerning the holding of *Corrigan v. Buckley*.

Judicial enforcement of restrictive covenants also violates Section 1978 of the Revised Statutes (8 U. S. C. sec. 42), as well as a treaty of the United States, namely, the United Nations Charter.

Racial restrictive covenants and their enforcement by the courts are so plainly contrary to the public policy of the United States that the judgments of the court below should be reversed by this Court.

Because of the discriminatory character and inequity of the restrictions on the sale, purchase and occupancy of land solely on the basis of race, no court of equity should lend

(its aid to the enforcement of such restrictions by the issuance of injunction.

Racial restrictive covenants are void as unreasonable restraints on alienation.

We call to the attention of this Court the following four analyses of the contentions here urged:

(1) Dissent of Justice Edgerton, in the case at bar in the court below: *Hurd v. Hodge*, — App. D. C. — 162 F. (2d) 233, 235.

(2) D. O. McGovney, "Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional," 33 Calif. L. Rev. 5 (1945).

(3) Loren Miller, "Race Restrictions on Ownership or Occupancy of Land," 7 Lawy. Guild Rev. 99 (May-June 1947).

(4) Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 U. of Chi. L. Rev. 198 (1945).

## I

**A. JUDICIAL ENFORCEMENT, UNDER THE LAW OF THE DISTRICT OF COLUMBIA, OF A RESTRICTIVE COVENANT WHICH, SOLELY ON THE BASIS OF RACE, (1) FORBIDS A PERSON FROM ACQUIRING, OCCUPYING AND SELLING LAND, AND (2) FORBIDS AN OWNER OF LAND FROM SELLING IT TO ANY MEMBER OF THE RESTRICTED GROUP, VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.**

These two cases involve two categories of petitioners, each of which asserts distinct types of property rights.

(1) The grantee petitioners contend that judicial enforcement of the restrictive covenant violates the due process

clause because, solely on the basis of their race, they are prevented by governmental action from purchasing, occupying and selling land for residential purposes. (2) Petitioner Urciolo, the landowner whom the trial court found to be white, and whose occupation is the real estate business (R. 144), contends that judicial enforcement of the restrictive covenant violates the due process clause because, solely on the basis of the race of prospective buyers, he is prevented by governmental action from selling his property to a substantial proportion of the potential buyers of residential land.<sup>9</sup>

**(1) THIS COURT HAS PROTECTED THE RIGHTS OF BOTH WHITE SELLERS AND NON-WHITE BUYERS AGAINST LEGISLATIVE RACIAL RESTRICTIONS.**

In three different cases, this Court has held that legislative restrictions upon the alienation, acquisition and occupancy of land, based solely on race, are unconstitutional under the Fourteenth Amendment as a deprivation of property without due process of law.

*Buchanan v. Warley*, 245 U. S. 60;

*Harmon v. Tyler*, 273 U. S. 668;

*City of Richmond v. Deans*, 281 U. S. 704.

In *Buchanan v. Warley*, 245 U. S. 60, an ordinance of the City of Louisville, Kentucky, forbade colored persons from occupying houses in blocks where the greater number of houses were occupied by white persons, and contained the same prohibitions as to white persons in blocks where the greater number of houses were occupied by colored persons.

<sup>9</sup> The restrictive covenant is a two-edged sword. Owners of covenanted property often find, as time elapses and the neighborhood changes, that they are unable to dispose of their property to the prohibited groups, although their neighbors had already made such a disposition. See Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem", 12 Univ. Chi. L. Rev. 198, 204 (1945).

Buchanan, a white person, brought an action against Warley, a Negro, for the specific performance of a contract of sale of Buchanan's lot to Warley. Warley defended upon a provision in his contract excusing him from performance in the event that he should not have under the laws of the State and City, the right to occupy the property as a residence, and contended that the ordinance prevented his occupancy. In its decision, this Court said:

"Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property. *Holden v. Hardy*, 169 U. S. 366, 391" (245 U. S. 60, at p. 74).

"The concrete question here is: May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the States, or by one of its municipalities, solely because of the color of the proposed occupant of the premises? That one may dispose of his property, subject only to the control of lawful enactments curtailing that right in the public interest, must be conceded. The question now presented makes it pertinent to enquire into the constitutional right of the white man to sell his property to a colored man, having in view the legal status of the purchaser and occupant" (245 U. S. 60, at p. 75).

After reviewing the history and judicial interpretation of the Thirteenth and Fourteenth Amendments, and quoting Sections 1978<sup>10</sup> and 1977<sup>11</sup> of the Revised Statutes (8

<sup>10</sup> Sec. 1978, Rev. Stat., 8 U.S.C. 42: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

<sup>11</sup> Sec. 1977, Rev. Stat., 8 U.S.C. 41: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the

U. S. C. 42, 41), this Court stated:

"In the face of these constitutional and statutory provisions, can a white man be denied, consistently with due process of law, the right to dispose of his property to a purchaser by prohibiting the occupation of it for the sole reason that the purchaser is a person of color intending to occupy the premises as a place of residence?

"The statute of 1866, originally passed under the sanction of the Thirteenth Amendment, 14 Stat. 27, and practically reenacted after the adoption of the Fourteenth Amendment, 16 Stat. 144, [Sec. 1978, Rev. Stat., 8 U. S. C. 42] expressly provided that all citizens of the United States in any State shall have the same right to purchase property as is enjoyed by white citizens. Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color. *Hall v. DeCuir*, 95 U. S. 485, 508. These enactments did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color. *Civil Rights Cases*, 109 U. S. 3, 22. The Fourteenth Amendment and these statutes enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color" (245 U. S. 60, at pp. 78-79).

"It is said that such acquisitions by colored persons depreciate property owned in the neighborhood by white persons. But property may be acquired by undesirable white neighbors or put to disagreeable though lawful uses with like results.

"We think this attempt to prevent the alienation of the property in question to a person of color was not a

full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case the ordinance cannot stand" (245 U. S. 60, at p. 82).

*Harmon v. Tyler*, 273 U. S. 668, was a suit to enjoin an owner of a cottage in a white community from leasing to Negro tenants without obtaining the consent of the majority of the white persons in the community. Such consent was required by statutes of the State of Louisiana and an ordinance of the City of New Orleans, Louisiana, prohibiting Negroes from establishing residence in a white community and whites from establishing residence in a Negro community, "except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the city." The statutes and ordinance, said the Supreme Court of Louisiana, did "not forbid a white man to sell his property in a white neighborhood to a negro who intends to reside in it, or forbid a negro to sell his property in a negro neighborhood to a white man who intends to reside in it. The statutes and the ordinance merely forbid the purchaser in either case to carry out his intention, without the consent of a majority of the citizens of the other race residing in the neighborhood."<sup>12</sup> The State Supreme Court therefore upheld the validity of the statutes and ordinance and affirmed the issuance of the injunction. That judgment was summarily reversed by this Court upon the authority of *Buchanan v. Warley*.

In *City of Richmond v. Deans*, 281 U. S. 704, the record in this Court (No. 729, Oct. Term, 1929)<sup>13</sup> indicates that

<sup>12</sup> *Tyler v. Harmon*, 158 La. 439, 104 So. 200, 206; *ibid.*, 160 La. 943, 107 So. 704.

<sup>13</sup> This Court may take judicial notice of the record of the *City of Richmond* case on file in this Court. *United States v. Pink*, 315 U. S. 203, 216.

Deans, a Negro, had entered into a contract to purchase a dwelling in a block containing more white than Negro residents. A pre-existing ordinance of the City of Richmond, Virginia, attempted to achieve residential segregation of white and colored persons by prohibiting any person from residing in a block where the majority of residences were occupied by those with whom such person was forbidden to intermarry under State law. The City threatened to enforce the ordinance against Deans. Hence, without attempting to receive the deed for, or to move into, the dwelling, Deans filed a suit in the Federal District Court to enjoin the City from enforcing the ordinance against him. Deans alleged that he had equitable title by reason of his purchase contract, was prepared to take legal title, and was entitled to use the house as his residence. The City contended that no existing property right was involved since Deans had only an executory contract and had not yet acquired the deed to the property, and therefore that Deans was not protected by the 14th Amendment. This contention was rejected. The Circuit Court of Appeals for the Fourth Circuit, 37 F. (2d) 712, affirming the District Court, held that the ordinance, being based on race alone, was unconstitutional under the authority of *Buchanan v. Warley* and *Harmon v. Tyler*. This Court affirmed that decision expressly on the authority of those two cases. 281 U.S. 704.

These rulings have been uniformly followed to invalidate similar statutes in other States restricting sale and occupancy of residential property solely on the basis of race.<sup>14</sup>

<sup>14</sup> Georgia: *Glover v. City of Atlanta*, 148 Ga. 285, 96 S.E. 562; *Bowen v. City of Atlanta*, 159 Ga. 145, 125 S.E. 199.

Maryland: *Jackson v. State*, 132 Md. 311, 103 Atl. 910.

North Carolina: *Clinard v. City of Winston-Salem*, 217 N. Car. 119, 6 S.E. (2d) 867.

Oklahoma: *Allen v. Oklahoma City*, 175 Okla. 421, 52 P. (2d) 1054.

Texas: *Liberty Annex Corp. v. City of Dallas*, 289 S.W. 1067, *aff'd*, 295 S.W. 591, 19 S.W. (2d) 845.

Virginia: *Irvine v. City of Clifton Forge*, 124 Va. 781, 97 S.E. 310.

and are applicable to the District of Columbia, since the Fifth Amendment also contains the guarantee of due process which is present in the Fourteenth Amendment.<sup>15</sup>

**(2) THE PETITIONERS HERE HAVE BEEN DEPRIVED OF THEIR PROPERTY WITHOUT DUE PROCESS BY THE GOVERNMENT, ACTING IN THIS INSTANCE THROUGH ITS JUDICIAL ARM.**

The decrees of the District Court, affirmed by the Court of Appeals, have adjudged null and void the deeds to the grantees, have ordered the grantees to vacate the land and premises and not to convey them to anyone, and have permanently enjoined Urciolo, whom the trial court found to be white, from renting, selling, leasing, transferring or conveying his lots to any Negro or colored person. It is not the private respondents, but the sovereignty, speaking through the court, that has issued mandates (a) to the grantee petitioners enjoining them from occupying, using or selling their property, and (b) to petitioner Urciolo, enjoining him from disposing of his property to any of a large number of people who constitute a substantial proportion of the potential buyers of residential land in the area. Failure to obey would result in prompt governmental enforcement of the decree. Such enforcement would include forcible dispossession of the grantees by governmental authorities<sup>16</sup> as well as governmental proceedings for contempt of court, with resulting fines and incarceration, behind steel bars, in jails maintained and operated by the Government.<sup>17</sup> As Justice Edgerton points out in his dis-

<sup>15</sup> *Heiner v. Donnan*, 285 U. S. 312, 326; *Twining v. New Jersey*, 211 U. S. 78, 101; *Farrington v. Tokushige*, 273 U. S. 284, 299; *French v. Barber Asphalt Paving Co.*, 181 U. S. 324, 329.

<sup>16</sup> When the marshal dispossesses a grantee, he acts pursuant to statute and "under the authority of the United States." 11 D. C. Code (1940) sec. 1101; 28 U.S.C. sec. 503.

<sup>17</sup> As Robert W. Kenny, then Attorney General of the State of California, has succinctly stated in a brief *amicus curiae* which he filed against

sent below (R. 425): "The action that begins with the decree and ends with its enforcement is obviously direct government action." 162 F. (2d) at 239.

Such enforcement by a court, through the issuance of its decrees with the potential threat of governmental punishment for violation of those decrees, is the very essence of governmental action. The respondents here, however, cannot by themselves complete their discrimination against the grantee petitioners and against Urciolo, but have sought the aid of the State, through a declaration and enforcement of its law by its judicial arm. Had there been here involved a law declared and enacted by the legislature, such a law—plainly invalid under the *Buchanan*, *Harmon*, and *City of Richmond* cases—would have required identical enforcement, namely, through the judicial arm.

If, because of the existence of a racial restrictive covenant, a Negro is privately persuaded or prevented from purchasing property, or a landowner is privately persuaded or prevented from selling to a Negro, or if the parties to the restrictive agreement each refuse to sell to a Negro, it is the action of the parties which effectively keeps the Negro out and which limits the market of the landowner. They do not represent the Government, nor are they assisted by the Government. In each of these cases the discrimination is being effected without resort to governmental force.

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the enforcement of a racial restrictive covenant in *Anderson v. Auseth*, L. A. No. 19,759, now pending before the Supreme Court of California: "The state as a whole is interested in this matter. The aid of its Courts, *nisi prius* and appellate, has been sought; its clerks, sheriffs and constables have been called to issue and serve writs which issue in the name of the People of the State of California; ultimately (if the hopes of plaintiffs and appellants are realized) even the jails of the State may be called upon to play a part in these actions." See Loren Miller, "Race Restrictions on Ownership or Occupancy of Land", 7 *Lawyers Guild Rev.*, No. 3, pp. 99, 107, n. 73 (May-June, 1947). The *Negro Handbook* (1946-47) (F. Murray, ed.) p. 35, lists several instances during 1946-47 in which courts enforcing restrictive covenants have cited grantees for contempt or have imprisoned them.

Their action at that point is like the action of the innkeeper who refuses to serve a Negro, which was characterized as an "individual invasion of individual rights" in the *Civil Rights Cases*, 109 U. S. 3, 11. But when private persuasion or pressures are ineffective to maintain obedience to the covenant, and it is necessary to resort to the courts for its enforcement, individual action ceases and governmental action begins.<sup>18</sup> The very fact that enforcement of the covenant is sought to be imposed against the wills of the sellers and

<sup>18</sup> Professor McGovney has succinctly stated this distinction as follows:

"The refusal of a landowner to sell to an offerer because the latter is a Negro, like the refusal of an innkeeper to serve an applicant for the same reason, is action by a private person which accomplishes its objective without need for calling on the state for aid. It is immaterial that he refuses because he thinks a restrictive agreement he has made binds him. The refusal of the landowner is no more forbidden by the Constitution than that of the innkeeper. Thus it has been correctly said by one Court that no man can be compelled to sell his land to a Negro, no doubt meaning compelled to accept an offer by a Negro. That is not the issue. The question is whether a state can prevent purchase by a Negro from a willing seller, or prevent occupancy by a Negro who has bought from a willing seller."

"The discriminatory agreements, conditions or covenants in deeds that exclude Negroes or other racial minorities from buying or occupying residential property so long as they remain purely private agreements are not unconstitutional. So long as they are voluntarily observed by the covenantors or the restricted grantees no action forbidden by the Constitution has occurred. But when the aid of the state is invoked to compel observance and the state acts to enforce observance, the state takes forbidden action: The deed to the colored buyer cannot be cancelled by purely private action. The Negro cannot be ousted from occupancy by purely private action. When a state court cancels the deed or ousts the occupant, the state through one of its organs is aiding, abetting, enforcing the discrimination." D. O. McGovney, "Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional", 33 Calif. L. Rev. 5, 20-21 (1945). See also Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem", 42 U. of Chi. L. Rev. 198, 211 (1945); Loren Miller, "Race Restrictions on Ownership or Occupancy of Land", 7 Lawy. Guild Rev. 99, 106-107 (May-June, 1947).

buyers of the property demonstrates the public authority aspect of the proceeding.

The distinction between private action and governmental action was clearly indicated in the *Civil Rights Cases*, 109 U. S. 3, at p. 17, where this Court said:

"In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, *unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings*. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but *if not sanctioned in some way by the State, or not done under State authority*, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress." (emphasis supplied.)

The thesis that racial discrimination is forbidden by the Constitution if directly supported in any way by governmental power, whether by laws or through judicial or executive proceedings, pervades this Court's opinion in the *Civil Rights Cases*. At almost every page, this Court referred to State action as being more than merely a Statute, and as including *judicial action*.<sup>19</sup> And this Court illustrated its

<sup>19</sup> *E.g.*, At Page 11: The 14th Amendment "nullifies and makes void all State legislation, and State action of every kind which" etc. It operates "against . . . the action of State officers executive or judicial, when" etc., and "against State laws and State proceedings affecting those rights. . . ." At page 13: The 14th Amendment does not operate "until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens. . . ." It operates "against State laws and acts done under State authority . . . that is, State laws, or State action of some kind, adverse" etc. At page 14: ". . . action of the State or its authorities. . . ." At page 15: ". . . against such State legislation or action. . . ." At page 16: Section 1977, Rev. Stats., 8 U.S.C. sec. 41, this Court said, is valid because it operates "against State laws

meaning by discussing, with approval, *Ex Parte Virginia*, 100 U. S. 339 (action by a judge in excluding Negroes from juries held to be governmental action forbidden by 14th Amendment), and stating that the 14th Amendment

"is directed against those who, assuming to use the authority of the State government, carry into effect such a rule of disqualification. In the Virginia case, the State, through its officer, enforced a rule of disqualification which the law was intended to abrogate and counteract. Whether the statute book of the State actually laid down any such rule of disqualification, or not, the State, through its officer, enforced such a rule: and it is against such State action, through its officers and agents, that the" [14th Amendment applies.] 109 U. S. 3, 15. (Emphasis supplied).

### (3) JUDICIAL ACTION IS SUBJECT TO THE DUE PROCESS CLAUSE.

This Court has consistently and repeatedly held that the due process clause,<sup>20</sup> admittedly subject to infringement by legislative action, may equally be violated when the government acts through the courts in declaring and enforcing the

*and proceedings, and customs having the force of law, which sanction the wrongful acts specified."* At page 17: "... some shield of State law or State authority. . . ." At page 18: "... some State law or State authority . . . State legislation or State action . . . State laws or proceedings of State officers, . . ." At page 23: "... State laws and proceedings . . . State regulations or proceedings . . . without any sanction or support from any State law or regulation. . . ." At page 24: The 14th Amendment is violated when "the denial of the right has some State sanction or authority . . . State laws, or State action . . ."

<sup>20</sup> "The Fifth Amendment, applicable to these cases, provides: "No person shall be . . . deprived of life, liberty, or property, without due process of law; . . ." The Fourteenth Amendment provides: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ." The due process clause of the Fifth Amendment impose upon the Federal Government the same restraints as are imposed on the states by the due process clause of the Fourteenth Amendment. *Heiner v. Donnan*, 235 U. S. 312, 326; *Twining v. New Jersey*, 211 U. S. 78, 101; *Farrington v. Tokushige*, 273 U. S. 284, 299; *French v. Barber Asphalt Paving Co.*, 181 U. S. 324, 329.

common law, substantive as well as procedural. As Justice Edgerton, dissenting below, stated (R. 425; 162 F. (2d) at pp. 239-240):

"Since courts are arms of government they are subject, like legislatures and executive officers, to the restrictions that the Constitution imposes on government. Every case that holds legislation unconstitutional holds in terms or in effect that its judicial enforcement would be unconstitutional. The Constitution does not exempt any kind of judicial action from the requirements of due process of law . . . Rules which the due process clause forbids legislatures to enact it forbids courts to adopt, for substantive due process is not a matter of method. A judicial decree which would be invalid if it had legislative sanction is not validated by lack of legislative sanction."

The first general expression by this Court of the scope of governmental action covered by the Fourteenth Amendment appears in *Virginia v. Rives*, 100 U.S. 313, 318 (1879):

"It is doubtless true that a State may act through different agencies,—either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another."

In *Ex Parte Virginia*, 100 U.S. 339, 346-47, the case immediately following *Virginia v. Rives*, *supra*, this Court more comprehensively stated:

"... They [the prohibitions of the 14th Amendment] have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers

are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

The due process clause guards against judicial action not only on procedural questions but also on substantive questions. Thus, in *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226 (1896); involving the constitutionality of a decision by the Supreme Court of Illinois which had upheld the award of only \$1.00 damages by a jury in a condemnation proceeding, Mr. Justice Harlan, speaking for the Court, said (pp. 234-235):

"Nor is the contention that the railroad company has been deprived of its property without due process of law entirely met by the suggestion that it had due notice of the proceedings for condemnation, appeared in court, and was admitted to make defense. It is true that this court has said that a trial in a court of justice according to the modes of proceeding applicable to such a case, secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice—the court having jurisdiction of the subject-matter and of the parties, and the defendant having full opportunity to be heard—met the requirement of due process of law. *United States v. Cruikshank*, 92 U. S. 542, 554; *Leeper v. Texas*, 139 U. S. 462, 468. But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the

statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard; and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form . . . the final judgment of a state court, under the authority of which the property is in fact taken, is to be deemed the act of the State within the meaning of that amendment." (Emphasis supplied.)

Thus, judicial action, not involving any statute,<sup>21</sup> has been held by this Court to be State action in deciding a variety of procedural and substantive questions arising under the due process clause of the Fourteenth Amendment. In criminal cases, the challenged action by the State court has related both to procedural matters such as the selection of jurors,<sup>22</sup> failure to provide counsel,<sup>23</sup> the inability to

<sup>21</sup> Even where a statute is involved, this Court has frequently limited its decision respecting violation of due process to the manner in which the court applied the statute to the specific facts presented. Thus, in *Fiske v. Kansas*, 274 U. S. 380, 387, this Court held that the judicial application of the statute, not the statute itself, "is an arbitrary and unreasonable exercise of the police power of the State, unwarrantably infringing the liberty of the defendant in violation of the due process clause of the Fourteenth Amendment." See also *Thomas v. Collins*, 323 U. S. 516, 532-533; *Marsh v. Alabama*, 326 U. S. 501, 504, 509.

<sup>22</sup> *Ex Parte Virginia*, 100 U. S. 339; *Neal v. Delaware*, 103 U. S. 370 (1880). In *Neal v. Delaware*, *supra*, this Court said at page 397: "The action of those officers (court officials charged with the selection of grand and petit jurors) in the premises is to be deemed the act of the State; and the refusal of the State court to redress the wrong by them committed was a denial of a right secured to the prisoner by the Constitution and laws of the United States." See also *Norris v. Alabama*, 294 U. S. 587, 589; *Carter v. Texas*, 177 U. S. 442, 447; *Rogers v. Alabama*, 192 U. S. 226, 231; *Martin v. Texas*, 200 U. S. 316, 319 (exclusion of Negroes from juries; in each of these decisions this Court stated that the Fourteenth Amendment may be violated by "action of a State, whether through its legislature, through its courts, or through its executive or administrative officers").

<sup>23</sup> *Powell v. Alabama*, 287 U. S. 45; *Williams v. Kaiser*, 323 U. S. 471; *Tomkins v. Missouri*, 323 U. S. 485; *Hawk v. Olson*, 326 U. S. 271; *DeMeerleer v. Michigan*, 329 U. S. 683.

protect the jury from public hysteria,<sup>24</sup> and convictions through the use of coerced confessions,<sup>25</sup> or through perjured testimony knowingly used;<sup>26</sup> and to substantive matters such as conviction for common law offences,<sup>27</sup> and judicial power to punish for contempt.<sup>28</sup> In these decisions this Court has uniformly recognized, as expressed in *Twining v. New Jersey*, 211 U. S. 78, 90-91, that "The judi-

<sup>24</sup> *Moore v. Dempsey*, 261 U. S. 86. See dissenting opinion of Mr. Justice Holmes (Mr. Justice Hughes concurring) in *Frank v. Mangum*, 237 U. S. 309, 345, 347:

"... Whatever disagreement there may be as to the scope of the phrase 'due process of law,' there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard. Mob law does not become due process of law by securing the assent of a terrorized jury

"When such a case is presented, it cannot be said, in our view, that the state court decision makes the matter *res judicata*. The State acts when by its agency it finds the prisoner guilty and condemns him." (Emphasis supplied.)

<sup>25</sup> *Chambers v. Florida*, 309 U. S. 227; *Ashcraft v. Tennessee*, 322 U. S. 143; *Brown v. Mississippi*, 297 U. S. 278; *White v. Texas*, 310 U. S. 530.

<sup>26</sup> *Mooney v. Holohan*, 294 U. S. 103: "The due process clause of the Fourteenth Amendment governs any action of a State through its legislature, its courts, or its executive officers, including action through its prosecuting officers."

<sup>27</sup> In *Cantwell v. Connecticut*, 310 U. S. 296, 307-311, Cantwell was convicted of the common law offense of inciting a breach of the peace, based upon his playing phonograph records on the street offensive to the religious beliefs of persons requested by him to listen to them. There was no question of jurisdiction, or of opportunity to be heard. This Court held that in the circumstances the common law conviction violated the constitutional guarantees of the due process clause of the Fourteenth Amendment, and referred to the court's action as action "of the State."

<sup>28</sup> This Court has in several cases held that convictions by a State court for criminal contempt because of newspaper comment on pending litigation constituted State action which did not meet the tests of the due process clause of the Fourteenth Amendment. *Bridges v. California*, 314 U. S. 252; *Pennekamp v. Florida*, 328 U. S. 331; *Craig v. Harney*, 331 U. S. 367. Even the dissent in the latter case (Justice Frankfurter, speaking for himself and Chief Justice Vinson) at p. 385 agreed that: "We are not, therefore, merely reviewing a decision of the Texas court; we are passing upon the power of the State of Texas. The question before us must be considered in the light of the total power the State possesses. . . . *Skiriotes v. Florida*, 313 U. S. 69, 79."

cial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the State."

In civil cases, also, this Court has held that a judicial decree or judgment is governmental action which is subject to the standards and limitations of the due process clause, with regard to both procedural and substantive matters. Thus, a judgment is held to be "State" action in violation of due process where the court did not have jurisdiction over the subject matter or over the parties,<sup>29</sup> or where the notice and opportunity to be heard were insufficient.<sup>30</sup> And if a judgment which was acquired in violation of due process in another jurisdiction is sought to be enforced, either in a State court<sup>31</sup> or in a Federal court,<sup>32</sup> the court's exten-

<sup>29</sup> In *Scott v. McNeal*, 154 U. S. 34, a probate court had, after public notice, appointed an administrator of Scott's estate. Scott had been absent and not heard from for over 7 years, but was actually then alive. Pursuant to court order, the administrator sold Scott's land at public auction, and the sale was confirmed by the probate court. Scott later sued the subsequent grantee of the land. The State court directed a verdict for the defendant on the basis of the prior probate proceedings and sale. *Held*: Reversed; the State court's judgment giving effect to the probate court's decree deprived Scott of his property in violation of the due process clause, whose "prohibitions extend to all acts of the State, whether through its legislative, its executive, or its judicial authorities" (at p. 45). See also *Pennoyer v. Neff*, 95 U. S. 714.

<sup>30</sup> *Brinkerhoff-Paris Trust & Savings Co. v. Hill*, 281 U. S. 673. At p. 680 this Court said: "The federal guaranty of due process extends to State action through its judicial as well as through its legislative, executive or administrative branch of government."

<sup>31</sup> *Old Wayne Mutual Life Assn. of Indianapolis v. McDonough*, 204 U. S. 8 (Pennsylvania judgment obtained without the notice required by due process of law held not entitled to full faith and credit in Indiana. At p. 23, this Court said: "... the act of the Pennsylvania court in rendering the judgment must be deemed that of the State within the meaning of the Fourteenth Amendment. . . .")

<sup>32</sup> *Griffin v. Griffin*, 327 U. S. 220 (New York judgment obtained without the notice required by due process of law held not entitled to full faith and credit in the District of Columbia). At p. 229, this Court said: "Due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process. Restatement of Judgments, sec. 11, Comment c." That Federal

sion of full faith and credit to that judgment would itself constitute governmental action in violation of the due process clause of the Fourteenth and of the Fifth Amendments respectively. Judicial action in misapplying the judicial principle of *res judicata* has in several instances been held to be State action in violation of the due process clause.<sup>33</sup> Particularly analogous are the cases in which lower courts had, upon the request of employers seeking to protect alleged "property rights," granted injunctions against peaceful picketing. In *American Federation of Labor v. Swing*, 312 U. S. 321, the State court issued the injunction on the ground that peaceful picketing was unlawful under the State's common law policy. This Court, stating that "our concern is with the final decree of the appellate court" (p. 324), held that the injunction constituted "State" action in violation of the Fourteenth Amendment (pp. 325-326). In *Bakery Drivers Local v. Wohl*, 315 U. S. 769, this Court held that a similar State court injunction violated the due process clause of the Fourteenth Amendment. And in *Cafeteria Union v. Angelos*, 320 U. S. 293,

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courts must meet the same standards as State courts with respect to due process is indicated by this Court's citation of comment c, section 11, of the Restatement of Judgments, the relevant language of which relates specifically only to State Judicial action and the 14th Amendment.

<sup>33</sup> In *Postal Telegraph Cable Co. v. City of Newport*, 247 U. S. 464, 476, the judgment of a State court holding that a prior judgment against one not a party or in privity with a party therein was *res judicata*, was held to be "State" action which disregards "the requirement of due process." In *Hansberry v. Lee*, 311 U. S. 32, 41, a racial restrictive covenant had been upheld in a prior collusive suit in Illinois between owners of some of the restricted lots. Later, other persons not parties to that suit contested the validity of the restrictive covenant. The Supreme Court of Illinois, holding the first suit was a "class suit," held the first judgment to be *res judicata*. This Court reversed, holding that the prior suit was not a proper class suit, "and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require." See also *United States v. Pink*, 315 U. S. 203, 232-233 (1942) (referring to court's denial of relief as "state action").

this Court held that "injunctions sanctioned by the New York Court of Appeals exceeded the bounds within which the Fourteenth Amendment confines State power" (p. 294). See also *Drivers Union v. Meadowmoor Co.*, 312 U. S. 287, 294, 297, 298.

The principle that the actions of the Government through any of its arms are subject to the limitations of the Constitutional requirements of due process has also been applied to executive agencies of the Government,<sup>34</sup> and even to administrative officers of the Government who act beyond, but under color of, their governmental authority.<sup>35</sup>

The language of this Court in *Hovey v. Elliott*, 167 U. S. 409, 417-418, involving decrees by the court of the District of Columbia holding a defendant in contempt for not paying over certain moneys and ordering that his answer in a chancery suit be stricken and that a decree *pro confesso*

<sup>34</sup> *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35-36 (State board of assessment "represents the State, and its action is the action of the State. The provisions of the Fourteenth Amendment are not confined to the action of the State through its legislature, or through the executive or judicial authority. Those provisions relate to and cover all the instrumentalities by which the State acts, and so it has been held that, whoever by virtue of public position under a State government, deprives another of any right protected by that amendment against deprivation by the State, violates the constitutional inhibition; and as he acts in the name of the State and for the State, and is clothed with the State's powers, his act is that of the State. *Chicago, Burlington & Quincy R. R. v. Chicago*, 166 U. S. 226.") *Mooney v. Holohan*, 294 U. S. 103 ("The due process clause of the Fourteenth Amendment governs any action of a State through its legislature, its courts, or its executive officers, including action through its prosecuting officers.")

<sup>35</sup> *United States v. Classic*, 313 U. S. 299, 326; *Screws v. United States*, 325 U. S. 91, 110, cf. 141. Any doubt as to whether unauthorized action of State officials is to be deemed the action of the State subject to the Fourteenth Amendment entirely disappears when "the judicial power of the State has been exerted in justifying" the action, *Iowa-Des Moines Bank v. Bennett*, 284 U. S. 239, 246, when "the highest court of the State confirms such action and thereby makes it the law of the State . . . as the ultimate voice of state law." *Snowden v. Hughes*, 321 U. S. 1, 17 (Justice Frankfurter, concurring).

be entered against him, is particularly applicable to this case:

"Can it be doubted that due process of law signifies a right to be heard in one's defence? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? *If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution.* If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment, to compel obedience to law and to enforce justice courts possess the right to inflict the very wrongs which they were created to prevent." (Emphasis supplied.)

#### **(4) LEGISLATIVE RACIAL RESTRICTIONS COMPARED TO JUDICIAL ENFORCEMENT OF RACIAL RESTRICTIVE COVENANTS.**

Ironically, although it would be unconstitutional for a legislature to enact a statute imposing racial restrictions on land use, yet the wholesale and extensive imposition of these racial restrictive covenants has a more drastic effect than any legislative zoning statute. Through legislative control, even with all of its evils, it would at least have been possible to provide some sort of planned expansion of areas predominantly occupied by Negroes or other ethnic groups living in overcrowded or slum conditions. But the creation by individuals of racial restrictive covenants ordinarily takes no broader view than that dictated by racial prejudice. Furthermore, a statute may be, and frequently is, repealed or modified to accommodate changed

conditions, or in response to changing concepts resulting from education. Most racial restrictive covenants, however, including the 1906 covenant here involved, purport to be *perpetual* restrictions, fossilizing eternally the prejudice pattern of a passing historical moment. In addition, legislative restrictions, subject to public scrutiny and opposition by the entire community, are imposed by public officials who are at least presumably responsible to the community. Racial restrictive covenants, however, are imposed by persons who are not responsible to the community and who neither represent those restricted nor desire to represent them. Moreover, under legislative zoning, the individuals who are opposed to a given restriction at least have the possibility of abolishing the restriction by trying to elect a majority of the legislature which would do so. In the case of racial restrictive covenants, however, suits are often instituted by only one or merely a few persons to dispossess others from their property and homes even though the majority of neighboring property owners in the area either oppose the initiation of such a suit,<sup>36</sup> or have affirmatively agreed to remove the restriction.<sup>37</sup> The use of the government's power, through the courts, to enforce this private zoning and to deprive other individuals of their fundamental rights to dispose of their own property or to acquire and occupy that property as their home, is thus more arbitrary than judicial enforcement of racial zoning pursuant to the admittedly unconstitutional and vicious legislative zoning statutes. Hence, judicial action enforcing a mere private covenant effects a form of racial zoning more iniquitous

<sup>36</sup> The majority of neighboring property owners opposed the initiation of the notorious *Garber v. Tushin* restrictive covenant suit in the Circuit Court of Montgomery County, Maryland (Equity No. 12894, filed April 11, 1947). See *The Evening Star*, Washington, D. C., page A-14, Sept. 13, 1947; *The Washington Post*, page 3, Sept. 17, 1947.

<sup>37</sup> St. Clair Drake and Horace Cayton, "Black Metropolis," p. 185 (1945).

than the plainly unconstitutional racial zoning by legislation. Legislative racial restrictions have no relevancy to public health, safety, morals or general welfare. *Buchanan v. Warley*, 245 U. S. 60, 74-75, 81-82. The judicial enforcement of racial restrictive covenants is certainly in no better position. If legislative racial restrictions are invalid—as they admittedly are—then the judicial enforcement of racial restrictive covenants is equally invalid.

**(5) ASSUMED CASES SHOWING UNCONSTITUTIONALITY OF JUDICIAL ENFORCEMENT OF BOTH RACIAL RESTRICTIVE COVENANTS AND RACIAL ZONING STATUTE.**

From the standpoint of unconstitutionality, however, there is indeed no difference between the judicial enforcement of a racial zoning statute and the judicial enforcement of a racial restrictive covenant. Both involve the application of law by government to achieve the same result. This can be illustrated by the following pattern of cases in which, let us assume, the following facts and law exist in the City of A, in the State of B, one of the United States, wherein reside whites and Negroes:

(a) *Facts*: The legislature enacts a statute zoning certain areas, some for occupancy only by whites and some for occupancy only by Negroes. The statute provides civil and criminal penalties and authorizes *inter alia* enforcement by injunction in a suit by any white or Negro living in a zoned area against a defendant of the other race, occupying premises in violation of the statute. *Decision*: In such an injunction suit, the judgment should be for the defendant, following *Buchanan v. Warley*, 245 U. S. 60.

(b) *Facts*: Now let us assume that there is no statutory law on the subject. However, a white person sues in an equity court to enjoin a Negro from occupying a residence in a block in which all of the other residences are occupied by whites, on the ground that under the state's common

law, it is an abatable nuisance for the races to mix, and that such nuisance arises whenever a Negro seeks to reside in a city block occupied only by whites or vice versa. *Decision*: Judgment should be for the defendant, since if an injunction were granted to abate such an alleged "nuisance", the Court would be recognizing and enforcing a law equally defective on constitutional grounds with the statute assumed in case (a).<sup>38</sup> Comparable decisions are: *Spencer Chapel Methodist Episcopal Church v. Brogan*, 104 Okla., 123, 231 Pac. 1074, 1076 (1924) (Lower court enjoined as a nuisance the rebuilding, in a mixed Negro-white neighborhood, of a Negro church which had burned; reversed on appeal because "A court of equity will not lend its aid to such an undertaking . . . contrary to law, equity and good conscience"); *Crist v. Henshaw*, 196 Okla. 168, 163 Pac. (2d) 214 (1945) (suit to enjoin white owners from selling land to Negroes for Negro occupancy on ground that such occupancy would create a nuisance and destroy market value of plaintiff's land; held, "for a court to restrict such sales" would violate the Fourteenth Amendment).

(c) *Facts*: Assume case (a) except that the zoning statute provides that a Negro may occupy a residence in a white zone only on the written consent of the majority of the persons of the opposite race inhabiting that zone (and vice versa). *Decision*: Judgment should be for the defendant here, following *Harmon v. Tyler*, 273 U. S. 668, reversing *Tyler v. Harmon*, 158 La. 339, 104 So. 200; *ibid.*, 160 La. 943, 107 So. 704.

(d) *Facts*: Assume case (b) except that the nuisance is regarded to arise as a matter of common law whenever a

<sup>38</sup> It is settled that whether a law is enacted by affirmative legislative action or is "recognized" as a part of the common law by the state court, it is subject to the limitations of the due process clause of the Constitution. See Part I A, (3) of this brief.

majority of the people of the opposite race residing in a block refuse to consent to the defendant's residence in such block. *Decision*: Since such a rule of common law is substantially the same as the statutory law supposed in case (c), and for the same reasons involved in case (b), it also should represent a constitutional violation.

(e) *Facts*: Property owners in a block agree to divide the block into two areas, one to be occupied solely by whites and the other solely by Negroes. The legislature enacts a statute confirming the agreement, and providing criminal penalties and enforcement by injunction in a suit by any white or Negro living in the zoned area against a defendant of the other race, occupying premises in violation of the agreement. *Decision*: In such an injunction suit, the judgment should be for defendant, following *Buchanan v. Warley*, 245 U. S. 60, and *Harmon v. Tyler*, 273 U. S. 668. A comparable case is *Liberty Annex Corp. v. City of Dallas*, 289 S. W. 1067, affirmed 295 S. W. 591, 19 S. W. (2d) 845 (Texas) (suit to enjoin enforcement of ordinance which confirmed a private segregation agreement and declared unlawful the residence by Negroes in white area, and vice versa. *Held*: Ordinance violates constitutional due process, following *Buchanan v. Warley*).

(f) *Facts*: An owner of a block subdivides it and inserts a restrictive covenant in each deed against occupancy of every lot by Negroes. The equity court denies enforcement on the ground that the restrictive covenant is against the public policy of the jurisdiction. At its next session, the legislature enacts a statute which declares that such restrictive covenants do not violate the state's public policy and expressly authorizes enforcement of them by injunction. *Decision*: Such an injunction should be denied under *Buchanan v. Warley* and *Harmon v. Tyler* since there is no difference between legislation affirmatively fixing racial

residential zoning and legislation affirmatively approving private racial residential zoning enforceable in the courts.

(g) *Facts*: As in case (f), an owner of a block subdivides it and inserts a restrictive covenant in each deed against occupancy of every lot by Negroes. This is essentially the cases at bar. *Decision*: The recognition by a court of equity that under the common law of the state such a covenant runs with the land and creates rights in favor of persons not parties to that covenant and against persons not parties to it, which can be enforced by injunction, in no real respect differs on constitutional grounds from any of the foregoing cases. No court should issue an injunction in a suit seeking to oust a Negro who has purchased and occupies one of the lots.

**(6) THE PETITIONERS HAVE NOT ATTEMPTED TO CONTRACT AWAY THEIR CONSTITUTIONAL RIGHTS.**

Urciolo and all of the grantees have the right, protected by statutes<sup>39</sup> and by the Constitution,<sup>40</sup> to acquire, use and dispose of property without discrimination based on race. There is no question here involved of whether Urciolo or any of the grantees may have attempted to "contract away" their constitutional rights with reference to their property. The fact is that neither Urciolo nor any of the grantees has been a party to any such contract. The deed restriction here involved was created about 1906. Even if it be deemed a contract between the person originally imposing the cov-

<sup>39</sup> Secs. 1977 and 1978, Rev. Stats., 8 U.S.C. secs. 41, 42.

<sup>40</sup> *Buchanan v. Warley*, 245 U. S. 60, 74: "Property . . . includes the right to acquire, use and dispose of it. The Constitution protects these essential attributes of property." In the *Civil Rights Cases*, 109 U. S. 3, 22, this Court said that sections 1977 and 1978, Rev. Stats., 8 U.S.C. secs. 41, 42, declare "fundamental rights which are the essence of civil freedom . . . which appertain to the essence of citizenship, and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery."

enant and his grantee, neither of them had any authority or right to contract away the rights of *other persons* to own, occupy, and dispose of the property. No subsequent grantee of the land became a *party* to any such contract by his purchase, nor thereby "contracted away" his constitutional and other rights in the land. At best, he could only be said to buy the land *subject to a burden*.

The question, thus, is not one of "contract", but whether the personal wish of the 1906 covenantor, that no person of a particular racial group should thereafter buy and occupy the land, is the kind of burden which the judicial arm of government may validly impose on all people who may thereafter buy the land, irrespective of their wishes in the matter. The burden here involved is utterly different from other types of burdens on land which may validly be imposed. See Part VII of this Brief. The fact that the 1906 covenantor and his grantee signed a sheet of paper while consummating a bargain and sale between themselves could not and should not create any authority or right to inyoke the power of the Government to bind millions of people to a scheme which would discriminate against them solely because of their race. Judicial enforcement of the covenant would (a) violate rights guaranteed by the Constitution and by statute to both sellers and buyers of the property, (b) be contrary to public policy, (c) be inconsistent with treaty obligations, (d) be repugnant to principles of equity, and (e) unduly restrict the alienability of property. In these circumstances, the "burden" which the covenantor sought to impose on the land cannot and should not be deemed the type of "burden" which may validly be enforced by the judiciary. Cf. Justice Holmes in *Norcross v. James*, 140 Mass. 188, 191-3, 2 N. E. 946, 948-9.

**(7) JUDICIAL ENFORCEMENT OF RACIAL RESTRICTIVE COVENANTS IS UNCONSTITUTIONAL.**

It thus is plain that since both the legislature and the court act as arms of Government, with the authority of the sovereign, racial restrictions which the Government may not constitutionally impose through its legislature are equally forbidden to the Government acting through its courts.<sup>41</sup> The circumstance that this governmental action is initiated by an individual, is obviously immaterial. For in many of the above-cited cases, wherein this Court held court action violative of the due process clause, the action was initiated by individuals.

It is particularly noteworthy that the ordinance involved in *Harmon v. Tyler*, 273 U. S. 668, prohibited Negroes from establishing residence in a white community, and whites from establishing residence in a Negro community, only if the persons involved had not secured "the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the city." Exclusion thus depended on the private wishes of the individuals who constituted a majority of the opposite race. Nevertheless, when a suit was brought to enjoin an owner of a cottage in a white community from leasing to Negro tenants without obtaining the consent of a majority of the white persons in the community, this Court unhesitatingly held that the issuance of such an injunction would be in violation of the due process clause of the Constitution.<sup>42</sup> The attempt to deny

<sup>41</sup> *Hovey v. Elliott*, 167 U. S. 409, 417-418 ("... the judicial department... [does not have] the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution."); *Erie R. Co. v. Tompkins*, 304 U. S. 64, 78 ("And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.")

<sup>42</sup> The *Harmon* case thus demonstrates, as does *Buchanan v. Warley*, the irrelevancy of the argument that since Negroes are free to covenant

the rights of Negroes in the *Harmon* case rested on individual action predicated on statute law. In the cases at bar, this attempt rests on individual action predicated on judge-made law.

Under the decisions of this Court in the *Buchanan*, *Harmon*, and *City of Richmond* cases, the legislature is forbidden by the Constitution to grant to neighboring property owners the power to obtain a court decree which would deprive a landowner of his right to sell his property to whomsoever he desires, and which would deprive any person of his right to acquire real property for residential use and occupancy, solely on the basis of the race of the purchaser. If the power to obtain such a court decree cannot be conferred by the legislature upon neighboring property owners, the Constitution equally prohibits a court from granting such power to them through the development and application of nonstatutory rules of law. As Justice Edgerton remarked in his dissenting opinion in the court below (162 F. (2d) 233, 241; R. 427):

"The expressed will of a former property-owner cannot authorize the court to deny a right which the expressed will of a legislature could not authorize it to deny."

The difference between infringement of constitutional guarantees through the legislature and infringement through the judiciary is particularly meaningless where, as here, the court involved is a Federal District Court, since its powers to grant equitable relief are exclusively derived

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their property against purchase and occupancy by whites, Negroes have no complaint against the enforcement of restrictive covenants made by white persons. Further, this specious contention ignores the fact that "... the essence of the constitutional right is that it is a personal one". *Buchanan v. Warley*, 245 U. S. 60, 80; *McCabe v. Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 161-62; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, 351; *Mitchell v. United States*, 313 U. S. 80, 97.

from Acts of Congress. Judicial Code, Sec. 24, 28 U.S.C., Sec. 41 (1); 11 D.C. Code (1940), Secs. 305, 306. The District Court has no powers beyond those given it by Congress, and therefore cannot achieve results which the Constitution forbids Congress itself to achieve. *Cary v. Curtis*, 44 U. S. (3 How.) 236, 245; *Myers v. United States*, 272 U. S. 52, 130; Felix Frankfurter and Nathan Greene, "The Labor Injunction," pp. 208-209 (1930).

Judge Ross clearly probed the heart of the question in the first reported case involving a racial restrictive covenant. *Gandolfo v. Hartman*, 49 Fed. 181, 182, 183:

"It would be a very narrow construction of the constitutional amendment in question and of the decisions based upon it, and a very restricted application of the broad principles upon which both the amendment and the decisions proceed, to hold that, while State and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the State may lawfully do so by contract, which the Courts may enforce. Such a view is, I think, entirely inadmissible. Any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the court should no more enforce the one than the other . . . But the principle governing the case is, in my opinion, equally applicable here, where it is sought to enforce an agreement made contrary to the public policy of the government, in contravention of one of its treaties, and in violation of a principle embodied in its Constitution. Such a contract is absolutely void, and should not be enforced in any court,—certainly not in a court of equity of the United States."

**(8) THE CONTENTIONS HERE URGED ARE NOT NOVEL LEGAL DOCTRINES. THEY HAVE BEEN APPLIED BY THIS COURT IN NUMEROUS PRIOR CASES IN OTHER CONTEXTS.**

The contention here urged that the enforcement of racial restrictive covenants by judicial decree is unconstitutional

rests on settled legal doctrines. This Court has thrice held legislative racial zoning unconstitutional—this case involves governmental action which achieves precisely the same end through the judiciary. This Court has held that the judiciary as well as the legislature is subject to the due process clause—this case involves judicial action effecting a result which this Court has held to be in violation of due process. This case is of narrow legal compass because it involves a conjunction of *three* special elements: (a) the District Court is accomplishing that which if done under express legislative sanction would be unconstitutional, *AND* (b) the restriction is being applied to persons who have never attempted to contract away their constitutional rights, *AND* (c) the restriction is based solely on race.

Furthermore, this Court has already, in other contexts, recently rendered decisions indicating that constitutional rights are not to be denied through court action at the behest of private parties seeking to utilize governmental power to effect a result which the legislature itself could not constitutionally effect. Thus in *Marsh v. Alabama*, 326 U. S. 501, 505, this Court held that since "all those owners together could not have set up a municipal government with sufficient power to pass an ordinance completely barring" the exercise of the constitutional right, the totality of private ownership of the town could not exercise power, enforceable in the courts, to abridge such constitutional right. In *Smith v. Allwright*, 321 U.S. 649, this Court held that a State, which may not by legislation constitutionally deprive Negroes of the right to vote, may not achieve the same end through the medium of private political parties. In *Steele v. Louisville & Nashville Railroad Co.*, 323 U.S. 192, 203, this Court held that a private union acting as bargaining representative under the authority of federal law may not

make binding contracts discriminating among members of the craft which are not based on relevant differences, and that "discriminations based on race alone are obviously irrelevant and invidious."

In *A. F. of L. v. Swing*, 312 U.S. 321, this Court expressly held that a court injunction against peaceful picketing, based on the State's common law policy, was as unconstitutional as was the statute against peaceful picketing in *Thornhill v. Alabama*, 310 U. S. 88. The cases at bar (involving a court injunction against sale and occupancy of land solely because of race) are no different from the *Buchanan*, *Harmon*, and *City of Richmond* cases (holding that statutes forbidding sale and occupancy of land solely because of race were unconstitutional) than *A. F. of L. v. Swing* was different from *Thornhill v. Alabama*.

The present case, therefore, plainly falls within the scope of previous decisions of this Court. It involves no extension into new fields of law; it merely applies settled law to a practice used to evade the force of this Court's decisions holding racial zoning unconstitutional.

**B. THE ENFORCEMENT OF RACIAL RESTRICTIVE COVENANTS HAS DRASTICALLY CURTAILED THE ABILITY OF NEGROES TO SECURE ADEQUATE HOUSING AND HAS HEMMED THEM INTO SLUMS AND GHETTOS. THE COVENANTS HAVE BEEN A DIRECT AND MAJOR CAUSE OF ENORMOUS OVERCROWDING IN THE FEW AREAS AVAILABLE TO NEGRO RESIDENTIAL OCCUPANCY, WITH CONSEQUENT SUBSTANTIAL INCREASE IN DISEASE, DEATH, CRIME, IMMORALITY, JUVENILE DELINQUENCY, RACIAL TENSIONS, AND ECONOMIC EXPLOITATION FROM ARTIFICIALLY INFLATED RENTAL AND HOUSING COSTS. THEY CONSTITUTE A DIRECT DANGER TO OUR NATIONAL UNITY. IN THE LIGHT OF THESE EFFECTS AND CONDITIONS, THE JUDICIAL ENFORCEMENT OF RESTRICTIVE COVENANTS IS CLEARLY INCOMPATIBLE WITH THE DUE PROCESS CLAUSE OF THE CONSTITUTION.**

During the past two decades, racial restrictive covenants have been extensively and uniformly imposed in most of the major cities of the nation on a large percentage of all newly constructed dwellings, new residential subdivisions, and existing residential properties contiguous to areas occupied by Negroes.<sup>43</sup> This private, and wholesale, "zoning" has hemmed Negroes into virtual ghettos, by placing artificial yet impassable boundaries—iron rings in depth—around the existing areas of Negro occupancy, and barring Negroes of all income groups from occupancy in most suburban areas where new construction has been concentrated. The lack of sufficient space for decent living and normal expansion which has resulted largely from these

<sup>43</sup> "To Secure These Rights", The Report of the President's Committee on Civil Rights, pp. 68, 91. (Govt. Printing Off. 1947).

restrictions on the housing market and the increased urbanization of the Negro population have forced Negroes to "double-up" in excessively crowded dwellings and in congested neighborhoods; they have been grossly exploited by enormously inflated rents and selling prices; and the blighted slum areas into which they have been forced have, by virtue of such overcrowding, become further deteriorated.

This enforced living in slums has had universally known baneful effects upon the economic, social and moral life, not only of the Negroes, but also of the entire community.

This nation-wide condition is mirrored in the District of Columbia. The Negro population within the District has doubled since 1930. There are now about 260,000 Negroes in the District, constituting about 30% of its total population.<sup>44</sup> The inferiority of housing occupied by Negroes as compared with housing occupied by whites in the District is notorious.<sup>45</sup> Negroes as a group disproportionately occupy dwellings lacking the elementary requisites for decent living, are compelled to crowd large families into small subdivided apartments and rooms, and live in the oldest, most densely populated parts of the city with inadequate sunlight and play space. In its July, 1947, report on city planning, the Washington Board of Trade estimated that 70% of the population of the District's three major

<sup>44</sup> Negroes within the District of Columbia:

Date	Number	Percent of Population
1930 U. S. Census	132,068	27.1%
1940 U. S. Census	187,266	28.2%
1947 estimate based on U. S. Census survey.	About 260,000	About 30%

<sup>45</sup> See, e. g., Washington, D. C. Council of Social Agencies, "Social Survey—Report on Racial Relations", November, 1945; Agnes E. Meyer, *Negro Housing, Capital Sets Record for U. S. in Unalleviated Wretchedness of Slums*, The Washington Post, Section II, pp. 1B and 6B (February 6, 1944); 16th U. S. Census (1940), *Housing*.

slum areas are Negroes.<sup>46</sup> This is due largely to restrictive covenants.

### (1) THE NEGRO POPULATION IS BECOMING INCREASINGLY URBANIZED

In 1900, the Negro population of the United States was still largely rural. Only 2 million Negroes then lived in cities.<sup>47</sup> Since then the Negro population has rapidly moved to the cities, with most of the increase concentrated in industrial cities already having sizable Negro populations.<sup>48</sup> The following tables<sup>49</sup> reflect the urbanization of the Negro population:

#### INCREASE IN NEGRO URBAN POPULATION IN THE UNITED STATES

	1910	1920	1930	1940
Number of Negroes urbanized.	2,684,797	3,559,473	5,193,913	6,253,588
Percentage of Negroes urbanized.	27.3	34.0	43.7	48.6
Percentage of total United States population urbanized	45.8	51.4	56.2	56.5

#### INCREASE IN NEGRO POPULATION IN TEN LEADING INDUSTRIAL CITIES

	1910		1920		1930		1940	
City	Number of Negroes	% of total pop.	Number of Negroes	% of total pop.	Number of Negroes	% of total pop.	Number of Negroes	% of total pop.
New York	91,709	1.9	152,467	2.7	327,706	4.7	458,444	6.1
Chicago	44,103	2.0	109,458	4.1	233,903	6.9	277,731	8.2
Philadelphia	84,459	5.5	134,229	7.4	219,599	11.3	250,880	13.0
Detroit	5,741	1.2	40,838	4.1	120,066	7.7	149,119	9.2
Cleveland	8,448	1.5	34,451	4.3	71,899	8.0	84,504	9.6
St. Louis	43,960	6.4	69,854	9.0	93,580	11.4	108,765	13.3
Pittsburgh	25,623	4.7	37,725	6.4	54,983	8.2	62,216	9.3
Cincinnati	19,639	5.1	30,079	7.5	47,818	10.6	55,593	12.2
Indianapolis	21,816	9.3	34,678	11.0	43,967	12.1	51,142	13.2
Kansas City, Mo.	23,556	9.5	30,719	9.5	38,574	9.8	41,574	10.4

<sup>46</sup> Washington Board of Trade, "City Planning", July, 1947; "Washington—A Plan for Civic Improvements, 1947" (Report prepared for Commissioners of the District of Columbia by Citizens Planning Committee, May 15, 1947) p. 98.

<sup>47</sup> T. J. Woofter, Jr., "The Status of Racial and Ethnic Groups," in *Recent Social Trends in the United States*, ch. 11, p. 567 (1933).

<sup>48</sup> See T. J. Woofter, Jr., *Negro Problems in Cities*, ch. II (1928).

<sup>49</sup> U. S. Census data for 1910, 1920, 1930, and 1940. See also Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 U. of Chi. L. Rev. 198-202 (February 1945).

Particularly significant is the percentage of change, by color, of the populations of fourteen important cities during the period from 1930 to 1940. In each city the Negro population increased greatly whereas the total population either declined or increased at a much smaller rate.

**PERCENT OF POPULATION CHANGE, TOTAL AND NEGRO IN  
SELECTED CITIES: 1930 to 1940 (From U. S. Census Reports)**

City	Total population	Negro population
New York	7.6	38.9
Chicago	.6	18.7
Philadelphia	-1.0	14.2
Detroit	3.5	18.3
St. Louis	-7	16.2
Cleveland	-2.5	17.5
Pittsburgh	3	13.2
Cincinnati	1.0	16.3
Indianapolis	11.8	16.3
Los Angeles	21.5	64.0
Newark, N. J.	-2.8	17.7
Columbus	5.3	9.1
Gary	11.2	13.8
Dayton	4.8	18.7

Even more significant is the fact that the movement of Negroes to urban areas was further accelerated after 1940, as illustrated by the following data:

**POPULATION GROWTH, BY COLOR, IN SELECTED CITIES:  
1940 to 1945 OR 1946\***

City	White		Negro		Percentage of Increase: 1940 to 1945 or 1946	
	April 1940	1945-46	April 1940	1945-46	White	Negro
Los Angeles	1,406,430	1,654,866 <sup>a</sup>	63,774	133,082 <sup>a</sup>	17.7	108.7
San Francisco	602,701	772,354 <sup>b</sup>	4,846	32,001 <sup>b</sup>	28.1	560.4
Oakland	287,936	358,067 <sup>c</sup>	8,462	37,327 <sup>c</sup>	24.4	341.1
San Diego	196,946	347,594 <sup>d</sup>	4,143	13,136 <sup>d</sup>	76.5	217.1
Long Beach	162,582	235,602 <sup>e</sup>	610	3,659 <sup>e</sup>	44.9	499.8
Pasadena	76,737	91,099 <sup>f</sup>	3,929	6,326 <sup>f</sup>	18.7	61.0

\* Special Census titled *Race, Sex, by Census Tracts*, U. S. Census Bureau:

a. As of January 28, 1946

d. As of February 21, 1946

b. As of August 1, 1945

e. As of January 24, 1946

c. As of October 9, 1945

f. As of April 26, 1946

These statistics of Negro urbanization indicate that Negroes have come, and probably will continue to come, and remain, in the cities of the Nation in large numbers.

They come largely because expanding assembly-line industry, no longer able to get workers through immigration, recruits them for its labor force. Space and housing are obviously required for their shelter.

## (2) COMMUNITY DISORGANIZATION RESULTING FROM RESTRICTIVE COVENANTS

Restrictive covenants have been, in the cities, a prime factor contributing to the social disorganization of both the Negro people and the entire community. They have corrupted family life by promoting excessive density and congestion in ghetto-like communities of substandard houses. They have burdened Negroes with excessive housing and rental costs. Disease, infant mortality, insanity, crime, juvenile delinquency, and family discord have been disproportionately stimulated by the effects of restrictive covenants. The covenants have been a direct cause of increased racial tensions and race riots. And they have provided the basic structure for other forms of segregation and discrimination in schools, health and welfare services, police protection, sanitation, and other municipal facilities, with consequent inefficiency and lowered standards for all. The "positive correlation between segregation [of Negroes] and tuberculosis mortality, amount of overcrowding, percentage of housing needing major repairs, infant mortality" etc., has been amply proven.<sup>50</sup>

Although the residential segregation of Negroes and its deleterious effects are not due wholly to any one force, it is abundantly clear that racial restrictive covenants are a major cause thereof. The President's Committee on Civil Rights has stated that "the restrictive covenant has become the most effective modern method of accomplishing

<sup>50</sup> See Julius Jahn, Calvin F. Schmid, and Clarence Schrag, "The Measurement of Ecological Segregation," 12 American Sociological Review 293, 302-303 (June, 1947).

such segregation" and is the "chief weapon in the effort to keep Negroes from moving out of overcrowded quarters."<sup>51</sup> Judicial decisions have recognized that this is the purpose and effect of restrictive covenants. In *Grady v. Garland*, 67 App. D. C. 73, 89 F. (2d) 817, 819, the Court of Appeals for the District of Columbia stated: "A mere glance at the present situation demonstrates . . . the restriction . . . furnishes a complete barrier against the eastward movement of colored population into a restricted area—a dividing line." Justice Edgerton, dissenting in the court below in the cases at bar (162 F. (2d) 233, 244) (R. 430) stated:

"Covenants prevent free competition for a short supply of housing and curtail the supply available to Negroes . . . Exclusion from decent housing confines Negroes to slums to an even greater extent than their poverty makes necessary. Covenants exclude Negroes from a large fraction—no one knows just how large—of the decent housing in the District of Columbia. Some of it is within the economic reach of some of them. Because it is beyond their legal reach, relatively well-to-do Negroes are compelled to compete for inferior housing in unrestricted areas, and so on down the economic scale. That enforced housing segregation, in such circumstances, increases crowding, squalor, and prices in the areas where Negroes are compelled to live is obvious. It results in "doubling up," scandalous housing conditions for Negroes, destroyed home life, mounting juvenile delinquency, and other indications of social pathology which are bound to have their contagious influence upon adjoining white areas.' "

The importance of restrictive covenants in limiting the land space available for use by Negroes has been widely recognized by housing and city planning authorities. John B. Blandford, Jr., the first administrator of the National

<sup>51</sup> "To Secure These Rights", The Report of the President's Committee on Civil Rights, pp. 68, 91, 145, 169, 171 (Govt. Printing Off., 1947).

Housing Agency, stated that "the problems of site selection and racial restrictive covenants" are "barriers which exist even for the Negro citizen who can pay for a home, and, if permitted, could raise a family in decent surroundings."<sup>52</sup> The Commissioner of the Federal Public Housing Authority, pointing to "the desperate straits of minority groups," stated: "You cannot consign large masses of people to limited and tightly bound areas without deplorably affecting our nation's well-being. Space and more space is sorely needed for these people."<sup>53</sup> Wilson W. Wyatt, when National Housing Expediter and Administrator of the National Housing Agency, stated:<sup>54</sup>

"The Federal Government, of course, has a deep concern in the elimination in this country of all discrimination, including restrictive covenants, for reason of race, creed, color or national origin. We have said before and I am glad to go on record again that every effort will be made to assure veterans of all minority groups equal consideration under the Veterans Emergency Housing Program. Yet we are well aware that emergency methods cannot solve the problem of adequate housing for our minority groups. . . . All of us know that because of neighborhood resistance and

<sup>52</sup> John B. Blandford, Jr., "The Need for Low-Cost Housing", Address before the Annual Conference of the National Urban League, Columbus, Ohio, October 2, 1944, p. 1 of mimeographed copy. Mr. Blandford added: "We met troubles from the start of the war housing job, but they were multiplied every time we tried to build a project open to Negroes. These difficulties—of site selection, of obtaining more 'living space'—were deep-rooted and had to be overcome one by one. And delays only made more desperate the plight of both those who migrated to take war jobs and those already living in war industry centers . . . housing available to Negroes was already crowded . . . simply could not absorb newcomers in the volume that appeared."

<sup>53</sup> "Phillip M. Klutznick Resigns as FPHA Commissioner," *Journal of Housing* (July, 1946).

<sup>54</sup> Letter to the Conference for the Elimination of Restrictive Covenants, held in Chicago, May 10-11, 1946, quoted in *Proceedings of the Conference, etc.*, p. 4.

restrictions upon the use of land, new home sites—one of the keys to the problem—often are difficult to acquire for minority groups. During the war these restrictions too many times delayed or completely blocked private and public efforts to produce essential housing for minority group war workers.”

The National Housing Agency's Conference on October 28 to Nov. 2, 1946, stated: <sup>55</sup>

“Land or ‘living space’ is a crucial need. Because of racial restrictive covenants and other discriminatory practices, heavy concentrations of Negroes in limited areas are typical in communities where there are large proportions of Negro population. In usual patterns of urban growth, congestion is relieved somewhat by decentralization in which people move to outlying areas. Not so with Negroes. Their mobility is sharply limited. In a market where racial discrimination is practiced, their choice is restricted. Segregation patterns become hard and fast. Even city planners tend to adopt existing patterns of population density and segregation. The results are market distortions and wasteful expenditures.

“Large scale builders indicate that even where contractors appreciate the market for privately financed housing among Negroes and have adequate financing resources readily available, they are often stymied by lack of unrestricted or unopposed building sites.”

The Mayor's Conference in Chicago on City Planning in Race Relations (1944)<sup>56</sup> concluded that “At present Negroes are confined to restricted areas with bad houses and exorbitant rents. They are confined to these districts

<sup>55</sup> National Housing Agency, Summary and Digest of the Orientation Conference for Racial Relations Advisers, pp. 6-7 (October 28-Nov. 2, 1946).

<sup>56</sup> City of Chicago, City Planning in Race Relations, Proceedings of the Mayor's Conference on Race Relations, February, 1944.

by an atmosphere of prejudice, and specifically by conspiracies known as restrictive covenants."

The Chicago Housing Authority states:<sup>57</sup> "Outstanding in their need of housing in the emergency group are the Negroes of the city, whose number is estimated at about one-tenth the total population. The conditions of Negro housing—the over-crowdedness, the excessive rents, and the shamefully substandard conditions—have long been a subject of discussion. One of the reasons for the housing plight of the Negroes is restrictive covenants which block the production of new houses for them on vacant land in anything like the number required. These restrictions almost completely prohibit the use by Negroes of vacancies in the existing houses outside their 'ghettoes', and the only areas where Negro housing construction can take place are those already occupied by Negroes."

These views have been repeatedly corroborated by private city planning groups and by others who have studied and had experience with the problem. The following are illustrative: *The American City*: "The prime device for maintaining this stranglehold has been the restrictive covenant."<sup>58</sup> *Architectural Forum*: "Drawn like iron bands around bulging Negro neighborhoods in most Northern cities, race restrictive covenants have been tightened by war housing shortages . . . Restrictive covenants have bottled Negroes in densely crowded areas, where two out of every three houses are substandard."<sup>59</sup> *Drake and Cayton*:<sup>60</sup> "Restrictive covenants . . . confine Negroes

<sup>57</sup> "The Tenth Year of the Chicago Housing Authority" (Report for fiscal year ending June 30, 1947). pp. 14, 38.

<sup>58</sup> "Restrictive Covenants Directed Against Purchase or Occupancy of Land by Negroes," *The American City*, p. 103 (May, 1947).

<sup>59</sup> "Good Neighbors", *Architectural Forum*, (January, 1947).

<sup>60</sup> St. Clair Drake and Horace Cayton, "Black Metropolis," pp. 113, 179 (1945); Horace Cayton, "Negro Housing in Chicago", *Social Action*, p. 12, 26 (April 15, 1940).

to the Black Belt, and they limit the Black Belt to the most run-down areas of the city." *Weaver*: "Racial restrictive covenants, 'the principal instrument of residential segregation in the North', 'facilitate the most excessive exploitation of colored people, occasion over-crowding, and inevitably spell inadequate public and community facilities for residents of the black ghetto.'" <sup>61</sup> *Stern*: " . . . segregation is an important factor in causing the poor housing conditions of the Negro urban population . . . the restrictive compact or covenant as a device for enforcing segregation has been widely used in the North." <sup>62</sup>

Comprehensive statistical studies have shown that *at every income level non-whites* receive proportionately more substandard housing, or less housing value for the same price, than do white families who have access to the open housing market, and have proven that: <sup>63</sup>

"The progressive increase in the ratio of non-white to white occupancy in substandard housing for each succeeding rental bracket from the lowest to the highest clearly indicates that operation of the discriminated housing market, as a factor independent of comparable

<sup>61</sup> Robert C. Weaver, "Community Action Against Segregation", 13 Social Action 18 (Jan. 15, 1947); Weaver, "Whither Northern Race Relations Committees?", Phylon, (Third Quarter, 1944) p. 211; Weaver, "Race Restrictive Housing Covenants," 20 Journal of Land & Public Utility Economics 183 (Aug., 1944); Weaver, "Housing in a Democracy", 24 Annals of the American Academy of Political and Social Science, 95 (Mar., 1946); Weaver, "Planning for More Flexible Land Use," 23 Journal of Land & Public Utility Economics 29 (Feb., 1947); Weaver, "A Tool for Democratic Housing", Crisis, p. 47 (Feb., 1947).

<sup>62</sup> Richard Sterner, "The Negro's Share," pp. 200, 207 (1943); Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," p. 624 (1944).

<sup>63</sup> C. K. Robinson, Housing Analyst, National Housing Agency, "Relationship Between Condition of Dwellings and Rentals by Race," 22 Journal of Land and Public Utility Economics, 296, 301, 302 (Aug., 1946); Sara Shuman, "Differential Rents for White and Negro Families," Journal of Housing, pp. 167-174 (Aug., 1946).

rent-paying ability, is a major cause for the excessive occupancy of non-whites in substandard housing.

“The differentials revealed in this analysis may be imputed to the effect of residential racial restrictions. This is supported by the fact that the proportionate differentials between the two racial groups are greatest in the higher rental value brackets where racial restrictive practices operate to maintain a highly discriminatory market . . . .”

The District of Columbia is no different in this regard from other cities. The American Veterans Committee, for example, after months of unremitting search for a satisfactory site open to all of its veteran members regardless of race, color, or creed, was forced by the widespread existence of restrictive covenants, to abandon its plans to build a housing project in the District.<sup>64</sup> Uncontroverted testimony before a Senate investigating committee amply demonstrates that restrictive covenants have been instrumental in confining Negroes to slums in the District.<sup>65</sup>

<sup>64</sup> The Capital Veteran, p. 2 (October, 1947). (Newspaper of American Veterans Committee, Washington, D. C.)

<sup>65</sup> Justice Edgerton, dissenting in *Mays v. Burgess*, 79 App. D. C. 343, 147 F. (2d) 869, 877-878, quotes the following testimony, among others, in Investigation of the Program of the National Capital Housing Authority: Hearings before a Subcommittee of the Committee on the District of Columbia, United States Senate, 78th Cong., 2nd sess., on S. Res. 184 and S. 1699 (1944):

“It is generally recognized that there are practically no vacancies today for the Negro citizen of any income level in Washington. Hundreds of Negro war workers and resident families, evicted through no fault of their own, are separated and doubled up in already overcrowded dwellings. . . . The widespread use of restrictive covenants in the District constitutes a distinctive feature which distinguishes the housing problem of Negroes from that of all other racial groups. Confined by these intangible but almost impregnable barriers, Negroes . . . are discriminated against in the housing market by being thus barred from bidding in the open market for

**(a) Density, congestion, "piling-up" of Negroes in ghetto slums.**

Like most cities, Washington has grown by spreading outward from its business center (at about 13th and F Streets, N. W.) as well as by crowding more people into the older, inner zones. Non-whites (over 99% of non-whites in the District are Negroes) have, however, been crowded far more than whites, as shown by the following table based on the 1940 U. S. Census:

**PERCENT OF OCCUPIED DWELLING UNITS HAVING SPECIFIED NUMBERS OF PERSONS PER DWELLING UNIT AND PERSONS PER ROOM, BY TENURE AND COLOR OF OCCUPANTS, FOR THE DISTRICT OF COLUMBIA, 1940**

PERSONS PER DWELLING UNIT AND PERSONS PER ROOM	TENURE			
	All dwelling units		Tenant-occupied dwelling units	
	White	Nonwhite	White	Nonwhite
Persons per dwelling unit: <sup>a</sup>				
6 or more .....	11.6	28.9	9.4	28.7
11 or more .....	0.9	4.0	1.0	4.1
Persons per room: <sup>b</sup>				
More than 1 .....	14.8	37.9	19.4	43.1
More than 1.5 .....	5.6	18.5	7.9	21.9
More than 2 .....	1.2	5.8	1.7	7.0

<sup>a</sup> Derived from data in table 9 of "Housing—General Characteristics, District of Columbia"; 16th Census of the United States, 1940.

<sup>b</sup> Derived from data in table 10 of "Housing—General Characteristics, District of Columbia," 16th Census of the United States, 1940.

homes." Part 4, pp. 1110-1111; testimony of Mrs. Robert G. McGuire, Chairman, Emergency Committee on Housing in Metropolitan Washington, May 19, 1944.

"The main reason why Negroes have not moved from these congested areas into more adequate neighborhoods is the widespread use of covenants, agreements, and neighborhood resistance to the occupancy by Negroes of undeveloped and developed areas. The effect of these restrictions has been to limit artificially the housing market for Negroes and cause them to pay higher prices for the same or less value and services. This feature makes the housing problem of Negroes distinctive from that of any other racial group." Part 4, p. 1137; testimony of Mrs. Pauline R. Coggs, Chairman, Research Committee of the Emergency Committee on Housing in Metropolitan Washington, May 19, 1944.

The concentration of Negroes in the District in 1940 is vividly illustrated by the correlation between Charts 1 and 2 in the Appendix of this brief showing the distribution in 1940 of Negro population and dwelling units with 1.51 or more persons per room.

In April, 1947, the Census Bureau conducted a sample survey of population and housing in the Washington, D. C. Metropolitan Area, which includes the District and adjacent counties in Maryland and Virginia.<sup>66</sup> The results shown in the following table indicate that the large gap between white and Negro proportions of overcrowding in the District observed in 1940 have remained relatively unchanged.

PERCENT OF OCCUPIED DWELLING UNITS HAVING 6 OR MORE PERSONS PER DWELLING UNIT AND 1.5 OR MORE PERSONS PER ROOM BY COLOR OF OCCUPANTS, FOR WASHINGTON, D. C. METROPOLITAN AREA: 1940 AND 1947

PERSONS PER DWELLING UNIT AND PERSONS PER ROOM	WHITE		NONWHITE	
	1940	1947	1940	1947
Persons per dwelling unit:				
6 or more .....	12	9	29	23
Persons per room:				
More than 1.5 .....	5	4	18	12

Furthermore, while whites have spread out toward the suburbs, the Negro population has "piled up" in the inner zones of the city. This is shown by the following tables:

<sup>66</sup> Bureau of the Census, Current Population Reports, Housing, Series P-71, No. 1, July 14, 1947.

**POPULATION GROWTH BY COLOR AND ZONE OF RESIDENCE, FOR  
THE DISTRICT OF COLUMBIA: 1930 TO 1940<sup>67</sup>**

ZONE OF RESIDENCE	NEGRO			WHITE AND OTHER		
	Popu- lation in 1930	Popu- lation in 1940	Increase in popu- lation: 1930-1940	Popu- lation in 1930	Popu- lation in 1940	Increase in popu- lation: 1930-1940
All zones.....	132,068	187,266	55,198	354,901	475,825	120,924
I, II, and III (2¼ mile radius from business center).....	100,446	138,582	38,136	147,186	168,969	21,783
IV (from 2¼ to 3¼ miles out).....	19,212	28,266	9,054	132,472	167,534	35,062
V (from 3¼ miles out to D. C. boundary).....	12,410	20,418	8,008	75,243	139,322	64,079
Percent						
All zones.....	100	100	100	100	100	100
I, II, and III.....	76	74	69	42	36	18
IV.....	15	15	16	37	35	29
V.....	9	11	15	21	29	53

Thus, although the white population was already more "spread out" than the Negro in 1930, the large additional Negro population, during the next ten years, had to be absorbed in the same general areas that Negroes already occupied. More than two-thirds of both the new and the old Negro residents were confined to the already densely populated inner zones of the city. On the other hand, more than four-fifths of the increase in the white population occurred in the two outer zones, where most new residences were constructed and where population density was low.

Particularly significant are the relative proportions of

<sup>67</sup> Source: Fifteenth and Sixteenth Censuses. The "zones" are roughly concentric circles, and the population of each "zone" consists of the residents of the census tracts which fall chiefly within the area indicated. The zones are composed of the following census tracts:

Zone I—tracts 51, 58;

Zone II—tracts 46-50, 52-54, 57, 59-62, 86;

Zone III—tracts 33-38, 40-45, 55-56, 63-66, 70, 72, 82-83, 85, 87;

Zone IV—tracts 2-7, 23-32, 39, 67-69, 71, 74, 79-81, 84, 88, 91-93;

Zone V—tracts 8-22, 73, 75-78, 89-90, 94-95.

increase of the Negro and white population by zone, shown in the following extract of the above table:

ZONE OF RESIDENCE	PERCENT OF INCREASE IN POPULATION: 1930 to 1940	
	Negro	White
All zones	100	100
I, II, and III	69	18
IV	16	29
V	15	53

Similar but even more pronounced racial differences are apparent in the growth of Washington's suburbs, in the adjoining counties of Maryland and Virginia. As the following table shows, during the period from 1930 to 1940 the total suburban population increased from 21.6% to 27% of the entire metropolitan population, an increase of 82.4% in the suburban population. But the proportion of Negro residents in the suburban population *decreased* from 15.4% to 10.8%. Even more significant in demonstrating the "spreading out" of whites in the suburbs and the "piling up" of Negroes in the District is the fact that the racial population increases during this period *within the District* were 41.8% Negro and 34.1% white whereas the *suburban* increases were 28.2% Negro and 92.2% white.

POPULATION CHANGE, BY COLOR, IN THE DISTRICT OF COLUMBIA AND IN METROPOLITAN WASHINGTON OUTSIDE THE DISTRICT OF COLUMBIA: 1930-1940

AREA AND COLOR	1930		1940		* Percent of increase, 1930-1940
	Number	Percent	Number	Percent	
Metropolitan Washington	621,059	100.0	907,816	100.0	46.2
District of Columbia	486,869	78.4	663,091	73.0	36.2
Metropolitan outside of D. C.	134,190	21.6	244,725	27.0	82.4
District of Columbia	486,869	100.0	663,091	100.0	36.2
Negro	132,068	27.1	187,266	28.2	41.8
White*	354,801	72.9	475,825	71.8	34.1
Metropolitan outside of D. C.	134,190	100.0	244,725	100.0	82.4
Negro	20,681	15.4	26,517	10.8	28.2
White*	113,509	84.6	218,208	89.2	92.2

\* Includes small number of Chinese, Indian, etc.

Recent estimates based on Census Bureau sample surveys indicate that, while the population of the metropolitan area as a whole increased by one-third between 1940 and 1947, both the spreading out of whites in the suburban areas and the concentration of Negroes in the District continued. These Census surveys revealed that in 1947 only 20% of the dwelling units in the Washington, D. C. Metropolitan Area were occupied by Negroes, although they constitute 24% of the total Metropolitan Area population.<sup>68</sup>

The disproportionate increasing concentration in the District of Columbia of Negroes into crowded areas, compared to whites, is further illustrated by the following statistics from the 1930 and 1940 U. S. Censuses showing that during the ten years between 1930 and 1940, the number of Negroes living in areas with a population density of sixty or more persons per acre had considerably more than doubled, while whites had increased by only 87%; and that by 1940, two-thirds of all the Negroes in the District, but less than two-fifths of the whites, were living in such crowded areas.<sup>69</sup>

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<sup>68</sup> Bureau of the Census, Current Population Reports (Population Characteristics, Series P-21, No. 1, July 23, 1947) and (Housing, Series P-71, No. 1, July 14, 1947).

<sup>69</sup> A vivid description of extreme overcrowding of Negroes in the District of Columbia is contained in Agnes E. Meyer, "Negro Housing—Capital Sets Record for U. S. in Unalleviated Wretchedness of Slums", *The Washington Post*, sec. II, p. 1B, Sunday, Feb. 6, 1944:

"Not only houses have been subdivided, but small rooms, already too filthy for animal habitation, have been partitioned with cardboard to absorb more tenants.

"In Burke's Court, 14 occupants have been stowed away in a single room; in Ninth St. N.W., a small house holds 19 persons, while a woman and three children lived in the basement.

"Five or six persons to a room, occupying at times a single bed, is a commonplace."

**POPULATION GROWTH IN CENSUS TRACTS WITH SIXTY OR MORE PERSONS PER NET RESIDENTIAL ACRE, FOR THE DISTRICT OF COLUMBIA; 1930 to 1940<sup>70</sup>**

Color	Population in 1930	Population in 1940	Increase in Population 1930 to 1940
<b>WHITE</b>			
Number	98,667	184,684	86,017
Percent of total white	28	39	
Percent of increase			87
<b>NEGRO</b>			
Number	57,285	124,556	67,271
Percent of total Negro	43	67	
Percent of increase			117

The Negro veteran has been particularly affected by the substandard character and inadequate supply of housing. A recent survey by the Census Bureau indicates that the gross vacancy rate for privately financed dwelling units in the Washington, D. C. metropolitan area is 1.0% in white neighborhoods and 0.4% in Negro neighborhoods, and that "only three-fourths of the private vacancies in the area were habitable; of these only one-sixth were being offered for rent or sale . . . . One-fourth of the married white World War II veterans and seven-tenths of the married Negro veterans in the Washington Area were doubling up with relatives or friends or were living in rented rooms, trailers or tourist cabins."<sup>71</sup>

The ever increasing density, congestion, and "piling up" of Negroes is also typical in other cities. In Columbus, Ohio, between 1940 and 1947, the non-whites increased from 9% to 11% of the total population, but the proportion of the total dwelling units available to non-whites *decreased* from 9% to 8%.<sup>72</sup> Over 90% of the Negroes in Chicago are in

<sup>70</sup> Census tracts with 60 or more persons per net residential acre: 27-28, 30, 32-34, 36-37, 39, 42-44, 46, 48-50, 56-57, 59, 62, 66, 81-83.

<sup>71</sup> Bureau of the Census, "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C., Metropolitan District," (Population HVet—No. 84, Feb. 4, 1947).

<sup>72</sup> U. S. Bureau of the Census, Current Population Reports (Population Characteristics, Series P-21, 1947) and (Housing, Series P-71, 1947).

blocks predominantly occupied by Negroes.<sup>73</sup> By 1934 seventy-five percent of the colored population was thus concentrated in a number of other cities, with not a single non-white resident in the vast majority of the residential blocks of many American cities.<sup>74</sup> The degree of Negro urban concentration in 1940 is shown in the following table:

DISTRIBUTION OF NEGRO POPULATION IN SELECTED CITIES BY CENSUS TRACTS: 1940\*

CITY	Total Number Census Tracts	Number Census Tracts with 20 per cent & more Negroes	NEGRO POPULATION		PERCENT OF NEGRO POPULATION	
			Total	In Census Tracts with 20 per cent and more Negroes	In Census Tracts with 50 per cent Negroes and over	In Census Tracts with 20 per cent Negroes and over
New York <sup>b</sup>						
Manhattan	94	15	298,365	208,331	69.4	87.0
Brooklyn	118	8	107,263	59,918	11.9	55.0
Queens	60	2	25,890	12,078	None	46.6
Chicago	935	98	277,731	259,573	83.7	93.1
Philadelphia	404	49	250,880	188,592	55.1	67.1
Detroit	369	53	149,119	129,417	66.7	85.9
Cleveland	206	29	84,504	67,316	79.6	90.7
Los Angeles	303	19	63,774	52,283	65.6	82.0
Pittsburgh	194	23	62,216	39,307	42.6	63.2
Cincinnati	107	8	55,593	43,171	72.2	77.6
Indianapolis	107	19	51,142	42,506	58.6	83.6
Newark	98	17	45,760	29,958	33.3	72.0
Columbus, O.	60	9	34,701	26,606	56.4	73.5
Boston	156	7	23,679	17,029	37.1	72.4
Dayton	53	6	20,273	17,729	81.8	87.8
Buffalo	72	2	17,694	11,961	51.1	68.1
Atlantic City	23	7	15,668	15,499	79.6	98.2
Toledo	55	3	14,597	9,960	68.1	68.1
Milwaukee	153	4	8,821	6,861	58.9	77.8

\*Source: *Population and Housing, Statistics for Census Tracts*, 16th U. S. Census.

<sup>b</sup> New York City is divided into health areas rather than census tracts.

<sup>73</sup> St. Clair Drake and Horace Cayton, "Black Metropolis," p. 176 (1945).

<sup>74</sup> Homer Hoyt, "The Structure and Growth of Residential Neighborhoods in American Cities," Federal Housing Administration, pp. 65, 63 (1939).

**(b) The Negroes' disproportionate share of substandard housing.**

The congestion and overcrowding in Negro housing in the District of Columbia is accentuated by the sharp differences in the quality of housing available to Negroes as compared with whites. These differences are illustrated by the following 1940 U. S. Census data: <sup>75</sup>

**PERCENT OF OCCUPIED DWELLING UNITS HAVING SPECIFIED DEFICIENCIES, BY TENURE AND COLOR OF OCCUPANTS, FOR THE DISTRICT OF COLUMBIA: 1940**

DWELLING UNIT DEFICIENCY	TENURE			
	All dwelling units		Tenant-occupied dwelling units	
	White	Non-white	White	Non-white
<b>Needed:</b>				
Major structural repairs and/or private bath and/or private flush toilet.....	12.7	40.2	16.3	46.2
Major structural repairs.....	0.9	8.3	1.1	9.4
<b>Lacked:</b>				
Private flush toilet.....	11.1	35.5	14.7	41.2
Running water.....	1.5	12.3	2.0	13.8
Electric lighting.....	0.5	16.5	0.5	19.2
Refrigeration facilities.....	2.6	6.4	3.7	7.7

These significant data are vividly translated into human terms by Mrs. Agnes E. Meyer in her major article in *The Washington Post* of Feb. 6, 1944, on Negro housing in the District: <sup>76</sup>

"In my journey through the war centers I have visited the worst possible housing. But not in the

<sup>75</sup> Derived from data in tables 6, 8 and 9 of "Housing—General Characteristics, District of Columbia," 16th U. S. Census, 1940.

<sup>76</sup> Agnes E. Meyer, "Negro Housing—Capital Sets Record for U. S. in Unalleviated Wretchedness of Slums," *The Washington Post*, sec. II, p. 1B, Sunday, Feb. 6, 1944. Mrs. Meyer's article is accompanied by a photograph comparing housing at Fairlington (for whites) with that of the Negroes displaced by the Pentagon Building. Photographs of Negro slums within the shadow of the Capitol building are in Joseph D. Lohman and Edwin R. Embree, "The Nation's Capital," 36 Survey Graphic.

Negro slums of Detroit, not even in the Southern cities, have I seen human beings subjected to such unalleviated wretchedness as in the alleys of our own city of Washington . . . . The outdoor toilets are frequently stopped up, so that several neighboring houses, as well as the passerby, use the nearest obtainable facilities.

"In one row of houses the toilet and the well, where water is pumped by hand, are 4 feet apart. . . . Many of the toilets have such defective doors that they afford no privacy. One row of houses below the street level and continually damp has such a long record of tuberculosis that it is popularly known as T. B. row. . . .

But what can, for instance, our very competent Health Department do about it? The only thing it can do is put the tenants on the street because there is not, and has not been for six months, a single available Negro dwelling in Washington, except a few for immigrant war workers. . . .

When the victims are expelled from one overcrowded place, they are taken in by relatives or friends whose rooms are still more congested.

"The crowding in the slums of the District has also been intensified by the fact that not only housing

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33, 35 (Jan. 1947) and Loren Miller, "Covenants for Exclusion," 38 Survey Graphic 541, 543 (Oct. 1947). See also the photographs of Negro urban homes in Richard Wright and Edwin Rosskam, "12 Million Black Voices," pp. 91, 94, 101, 106, 107, 108, 110, 111, 114, 115, 132 and 147 (1941). As long ago as 1932 when the situation was much less acute, the Report on Negro Housing of the President's Conference on Home Building and Home Ownership pointed out that enforced residential segregation "has kept the Negro-occupied sections of cities throughout the country fatally unwholesome places, a menace to the health, morals and general decency of cities, and 'plague spots for race exploitation, friction and riots.'" (pp. 45, 46, 143-198). See also Woolfer, "Negro Problems in Cities," 95 (1928); Report of Pennsylvania State Temporary Commission on the Conditions of the Urban Colored Population, 139-142 (1943); Robert C. Weaver, "Housing in a Democracy," 244 Annals of the American Academy of Political and Social Science, 95-96 (Mar. 1946); Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," 626 (1944).

"I could see the stars and moon shine through the roof of the kitchen," said petitioner Hurd in describing one of the dwelling units he was shown for possible purchase as a home before he bought his present house (R. 310).

but the areas formerly occupied by Negroes have decreased. Various developments such as public buildings, war housing projects for whites and new roads have swept away many acres of ground heretofore open to Negro occupancy . . . ."

The disproportionate degree of Negro substandard housing is not due solely to poverty, but is significantly attributable to segregation and the discriminated housing market.<sup>77</sup>

The results of the April, 1947, Census Bureau survey of housing characteristics in the Washington, D. C., Metropolitan Area show that Negroes still live in much worse housing than whites.

PERCENT OF OCCUPIED DWELLING UNITS HAVING SPECIFIED DEFICIENCIES, BY COLOR OF OCCUPANTS, FOR THE WASHINGTON, D. C., METROPOLITAN DISTRICT: 1940 AND 1947<sup>78</sup>

DWELLING UNIT DEFICIENCY	WHITE		NON-WHITE	
	1940	1947	1940	1947
Needed:				
Major structural repairs and/or private bath and/or private flush toilet . . . . .	11	6	41	35
Major structural repairs . . . . .	3	2	12	19
Lacked:				
Private flush toilet . . . . .	10	5	32	23
Running water . . . . .	3	1	13	11
Central heating . . . . .	*	3	*	30
Electric lighting . . . . .	1	Less than 1	2	8

\* Data not shown by color.

The *Real Property Inventories* of the Federal Housing Administration demonstrate that this pattern of Negroes living in substandard dwellings in much higher proportions

<sup>77</sup> Corienne K. Robinson, "Relationship Between Condition of Dwellings and Rentals, by Race," 22 *Journal of Land & Public Utility Economics* 296 (Aug. 1946); Richard Sterner, "The Negro's Share," 187-188 (1943).

<sup>78</sup> Derived from data in tables 6 and 8 of "Housing—General Characteristics, District of Columbia," 16th U. S. Census, 1940; and from Table 2 of "Housing Characteristics of the Washington, D. C., Metropolitan District: 1947," Series P-71, No. 1, Bureau of the Census, July 14, 1947.

than whites is similarly pronounced in other cities throughout the nation.<sup>79</sup>

**(c) Economic exploitation through inflated rentals and housing costs.**

Restrictive covenants have been a direct and major cause of enormous inflation of rentals and housing costs for Negroes. They "lay the Negro masses open to exploitation and . . . drive down their housing standard even below what otherwise would be economically possible."<sup>80</sup> C. K. Robinson, Housing Analyst of the National Housing Agency, has shown that, *at every income level*, non-whites receive proportionately more substandard housing, or less housing value for the same price than do white families who have access to the open housing market,<sup>81</sup> and, progressively, as the Negro pays higher rentals, the greater becomes the racial differential in the quality of housing. Because the supply of homes available for purchase by Negroes is relatively much smaller than the supply available to the white population, Negroes must pay more to get housing than would white persons.<sup>82</sup> Real estate dealers often set two prices on a single piece of property—one for

<sup>79</sup> See Richard Sterner, chap. X, Urban Housing, in "The Negro's Share" (1943).

<sup>80</sup> Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," p. 625 (1944); Lester Velie, "Housing: The Chicago Racket," *Collier's*, p. 112. (Oct. 26, 1946).

<sup>81</sup> Corienne K. Robinson, "Relationship Between Condition of Dwellings and Rentals, by Race," 22 *Journ. of Land and Public Utility Economics*, 296 (Aug. 1946). See also Sara Shuman, "Differential Rents for White and Negro Families," *Journal of Housing*, pp. 167-174 (Aug. 1946).

<sup>82</sup> Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," pp. 379, 623 (1944); T. J. Woofter, Jr. "Rent," Chap. VII in *Negro Problems in Cities*, p. 121; George W. Beebler, Jr., "Colored Occupancy Raises Values," *The Review of the Society of Residential Appraisers*, p. 4 (Sept. 1945).

# MICRO CARD

TRADE MARK



21

409<sup>2</sup>



63



white buyers and a higher price for Negroes.<sup>83</sup> The National Association of Real Estate Boards has stated: "Negroes in the same economic groups are *better* pay because the demand for housing is so much keener."<sup>84</sup> White real estate companies renting apartments to Negroes and whites in the same building charge the Negroes 20% to 50% more rent than the white tenants are charged.<sup>85</sup> This inflation of housing costs and rentals for Negroes is further corroborated by the uncontradicted testimony in the present cases that the residential property in the area would be sold for 30% more to Negroes than to whites (R. 157, 261, 263, 337, 338, 340, 344, 362, 364), and that the rent charged Negroes in the neighborhood is higher than for whites (R. 282, 286). And because the Negro is constricted to residence in blighted or slum areas, where finance institutions are hesitant to make loans on property, he must pay higher interest on the money he borrows for home purchase or repair.<sup>86</sup>

**(d) Disease, death, crime, family disorganization, juvenile delinquency.**

The overcrowding and segregation of Negroes into slum ghettos which results so largely from restrictive covenants are direct influences in increasing disease and death among Negroes.

*Tuberculosis:* The much larger incidence of tuberculosis mortality among colored people than whites is shown by

<sup>83</sup> John C. Alston, "Negro Housing in Columbus, Ohio," (1946, publ. by Columbus Urban League) p. 12, 13; Alonzo G. Moron, "Where Shall They Live," The American City, p. 60 (April, 1942).

<sup>84</sup> "Realtor Work for Negro Housing," p. 5 (Oct. 24, 1944).

<sup>85</sup> St. Clair Drake and Horace R. Cayton, "Black Metropolis, A Study of Negro Life in a Northern City" 185, 186 (1945).

<sup>86</sup> Corienne K. Robinson, "Relationship Between Condition of Dwellings and Rentals, by Race," 22 Journ. of Land and Public Utility Economics, 296 (Aug. 1946).

the following data compiled by the District of Columbia Tuberculosis Association:

**TUBERCULOSIS (ALL FORMS) DEATHS, DISTRICT OF COLUMBIA  
1930 to 1945\***

Rates Per 100,000 Population

	White	Colored	Total
1930	62.0	285.0	117.1
1931	60.1	277.0	119.8
1932	61.1	280.1	121.6
1933	57.3	289.2	124.0
1934	47.4	272.0	108.8
1935	43.3	259.3	102.2
1936	47.8	264.5	107.0
1937	45.0	227.8	94.9
1938	38.8	240.1	93.8
1939	37.5	231.9	90.6
1940	42.2	207.1	89.1
1941	34.7	182.5	76.9
1942	31.8	175.4	72.8
1943	30.0	158.7	66.4
1944	33.6	148.1	66.2
1945	29.8	142.0	61.9

\* (Compiled from statistics of D. C. Bureau of Vital Statistics and Health Department.)

The District of Columbia Tuberculosis Association has further pointed out that in the District for 1945, tuberculosis, although the fifth ranking cause of death for the total population, was the second ranking cause of death for Negroes; and that although Negroes constitute only about 29% of the District's population, almost half of all new cases of tuberculosis reported in the District during the 6 years from 1940 through 1945 have been of Negroes.<sup>87</sup> The high correlation between Negro residence and tuberculosis mortality in the District of Columbia is strikingly illustrated by a comparison of Chart 1 (Negro population, 1940, in Dist. of Col.) with Chart 3 (tuberculosis death rate, 1940, in Dist. of Col.), in the Appendix to this brief. That it is not Negro biological susceptibility so much as the

<sup>87</sup> "Facts and Figures on Tuberculosis in D. C.," (Mimeographed study prepared by District of Columbia Tuberculosis Association) pp. 15-16, 17, 18-19, and Appended Tables 1, 1a, 2, 3, 6.

poor quality of housing and excessive congestion that is associated with tuberculosis mortality is indicated by the facts that tracts 42, 43 and 78 (50% Negro or over) had a tuberculosis rate of 50-99 deaths per 100,000, whereas tracts 4 and 58 (under 10% Negro) had a tuberculosis rate of 200 or more deaths per 100,000.

Equally illustrative is the correlation of the concentration of the Negro population and tuberculosis mortality in Chicago, as shown by Charts 9 and 10 in the Appendix to this Brief. See also Chart 11 showing pneumonia rates in Chicago.

*Infant Mortality:* In the Appendix to this brief; charts 1 and 4 show the high correlation in the distribution in the District of Columbia of the Negro population and of infant mortality rates.

*Crime, Immorality, Juvenile Delinquency:* Overcrowding of people in slum areas is a major cause of increased crime, family disorganization, immorality, juvenile delinquency, and abnormal patterns of living. The President's Conference on Home Building and Home Ownership has emphasized: "Patient investigations have revealed that the increase in juvenile delinquency has been largely a matter of the segregation of Negroes into areas of deterioration."<sup>88</sup>

<sup>88</sup> *Negro Housing*, The President's Conference on Home Building and Home Ownership, Washington, D. C., p. 145 (1932). The President's Conference further stated: "At least three types of social pathology have been observed to have a high and inescapable correlation with the character of Negro residence areas. These are: (1) A high rate of delinquency, (2) A high rate of mortality, and (3) A distorted standard of living. . . . The bulk of Negroes still live where health standards are hardest to maintain, where juvenile delinquency shows highest ratio, where vice goes unchecked, and where rents are far in excess of value and ability of occupants to meet them" (pp. 52, 71). Clifford R. Shaw and Henry D. McKay, "Juvenile Delinquency and Urban Areas," pp. 156-157 (1942): ". . . the significantly higher rates of delinquents found among the children of Negroes, the foreign born, and more recent immigrants are closely related to existing differences in their respective patterns of geographical distribu-

The high juvenile delinquency rate in the segregated areas in the District of Columbia are shown in Charts 5 and 6, in the Appendix of this brief, showing for 1937 the distribution of the arrests of persons under 17 years and the distribution of the residences of delinquent children committed to institutions or placed on probation.

Charts 1 and 7 in the Appendix show the concentration of the Negro population and of children from 3 to 18 years of age in the District of Columbia; and Charts 9 and 12 show the concentration of Negroes and of juvenile delinquency in Chicago.

Other forms of social pathology arise from slum living. "A chief source of revenue for both renters and home buyers is lodgers. The extent to which morals and health are jeopardized by the promiscuous taking in of roomers has been well established by many studies. This is one of the principal evils in Negro housing."<sup>89</sup> The restriction of Negroes into slum living "has promoted street prowling, excessive night life, the prevalence of tuberculosis and other disease, and a high crime rate."<sup>90</sup> The frustrations to which these restrictions contribute are manifested in the high insanity rates shown in Chart 8 (mental patients admitted to St. Elizabeth's Hospital in the District of Columbia, 1937) and in Chart 13 (average insanity rate in Chicago), and their correlation with the densely crowded Negro areas (Charts 1 and 9). See Appendix to this Brief. The close relationship between slum housing and these social pathologies is vividly illustrated by the following

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tion within the city. If these groups were found in the same proportion in all local areas, existing differences in the relative number of boys brought into court from the various groups might be expected to be greatly reduced or disappear entirely."

<sup>89</sup> *Negro Housing*, The President's Conference, *supra*, p. 72.

<sup>90</sup> Harry Elmer Barnes, *Society in Transition*, 347-348 (1939); see also Guy B. Johnson, "The Negro and Crime," 217 *Annals of the American Academy of Political and Social Science*, 94-95 (Sept. 1941).

section from the report of the Chicago Crime Commission survey made in 1945 in the Fifth Police District in Chicago,<sup>91</sup> which practically coincides with Chicago's Negro "Black Belt"<sup>92</sup>:

### "Housing

"One of the principal factors leading to a high crime rate in the Fifth Police District is the inadequate housing situation that prevails there. From the observation of Chicago Crime Commission investigators and through interviews with numerous representative citizens the conclusion is inescapable that undesirable living conditions in this area contribute materially to a high incidence of criminality.

"Every available facility for housing is utilized to provide sleeping and living quarters for the huge population that is crowded into the small geographical area comprising the Fifth Police District. It is estimated that there are approximately three thousand kitchenette apartment buildings in the district. The kitchenette apartments are extremely small. Usually a three burner gas stove for cooking purposes is provided in a small enclosure within each apartment. In some instances, old family residences have been converted into apartments for numerous families. One old family home now houses forty-six families. A three flat building is now occupied by sixteen families. Another building, originally constructed as a lodging place for unmarried persons, is being used as a dwelling place for almost two hundred families.

"Such conditions naturally precipitate lawless acts. Some police officials of the district stated that inadequate housing facilities is a major cause of a large amount of the

<sup>91</sup> Virgil W. Peterson, "Crime Conditions in Fifth Police District," in *Criminal Justice*, No. 73, pp. 15-16 (May, 1946), (Journal of the Chicago Crime Commission, 79 West Monroe Street, Chicago):

<sup>92</sup> Maps of the Fifth Police District on pp. 16 and 17, of Peterson's report, *supra*, show the crime centers in Chicago for 1944 and 1945; see the maps of the Negro area and population density in Joseph D. Lohman, "The Police and Minority Groups," pp. 18, 20, 24 (1947), and chart 9 in the Appendix to this brief.

crime in this area. Crowded conditions result in family arguments. In many instances community bathroom and cooking facilities are used by several families. Disputes arising over the use of such facilities, many times end in acts of violence. Meals are prepared by several families on a common range. Cuttings and shootings have followed arguments over the time required to cook a piece of meat. It is very common for entire floors in residence buildings to be equipped with only one bathroom which accommodates several families. Numerous men and women are thus thrown into close contact with one another resulting in quarrels and immorality. In many living facilities but one unsanitary washroom is available to the members of several families. Crowded sleeping quarters make it necessary in many instances for as many as four people to sleep in one bed. This naturally increases immorality. One resident reported that numerous people sleep in hallways on newspapers, thus creating a fire hazard.

"The living conditions also contribute to the juvenile delinquency problem. A member of the Housing Commission reported that it is very common for the parents to live at one address and the children at another. Some families are completely separated with the children living at one place, the father at a different location and the mother at a third address. It is obvious that such conditions prevent adequate parental supervision and undoubtedly contribute materially to juvenile delinquency.

"Due to the extremely congested conditions found in the Fifth Police District, the people living there have no chance for the development of normal home lives. In fact, with many residents their attachment to the home is naturally very slight. During the war numerous Negroes living in the Fifth District worked in war plants located many miles away. As was customary, workers obtained transportation through a car pool arrangement. With no incentive to return home following the working hours many men and women would stop in taverns and other places of amusement. Frequently this resulted in immorality and other delinquent acts. The deplorable unsanitary conditions existing in many housing facilities tend to create a feeling of unrest and discouragement on the part of many residents

People living under more desirable conditions are naturally viewed with envy. And when it is considered that little opportunity is afforded for moving away from the living conditions and surroundings that prevail in the area it is not difficult to understand that many people do not have a very hopeful outlook on the future.

"Almost without exception, of the numerous citizens of the district interviewed by Crime Commission representatives, the housing situation was mentioned as one of the most important factors contributing to the high crime and delinquency rate in the area."

#### (c) Race riots and tensions

Racial restrictive covenants are one of the contributing causes of race riots and racial tensions. The process of promoting these covenants brings to whites a program predicated upon fear of Negroes, and creates in Negroes deep resentments and hatreds against whites. The covenants sharpen the lines of demarcation between Negro and white communities, preventing the growth of mutual understanding between neighbors, and providing the physical basis for the quick growth of both white and Negro mobs. They both depress and compress Negro housing in a growing population to the point where the irresistible force of population pressure meets the immovable barrier of the covenant boundary line.

In their study of the 1943 Detroit race riots, Lee and Humphrey pointed out the relationship of bad housing, restrictive covenants and race riots:<sup>93</sup>

"Take an already overcrowded situation, add half again as many people, give them a great purchasing power, and still attempt to confine them within approxi-

<sup>93</sup> Alfred McClung Lee and Norman D. Humphrey, "Race Riot" pp. 93, 130; see also, pp. 17, 92-95, 97, 116, 140 (1943).

mate the old area, and the pressures developed within that increasingly inadequate 'container' will burst the walls."

"People who had become neighbors in mixed Negro and white neighborhoods did not riot against each other."

The Chicago Commission on Race Relations appointed by Governor Lowden of Illinois to study the 1919 Chicago race riots declared:<sup>94</sup>

"We are convinced by our inquiry . . . that measures involving or approaching . . . segregation are illegal, impracticable and would not solve, but would accentuate, the race problem and postpone its just and orderly solution by the process of adjustment."

A manual for the use of police in the Chicago Park District states:<sup>95</sup>

"The incredible congestion on the Negro South Side is a direct result of segregation buttressed by restrictive covenants. . . ."

"It is at the boundaries of the Negro community that the pressure of Negroes to expand runs up against the stone wall of white opposition. These are the regions of greatest aggravation and tension. Thus the sections adjacent to State Street and Cottage Grove and the area to the south of 63rd Street are ones in which race incidents are to be expected."

<sup>94</sup> St. Clair Drake and Horace Cayton, "Black Metropolis," p. 70 (1945); see Dorsha B. Hayes, "Chicago" pp. 259-260 (1944).

<sup>95</sup> Joseph D. Lohman, "The Police and Minority Groups," Manual, Chicago Park District Police Training School, pp. 25, 21 (1947).

The Federal Council of the Churches of Christ in America stated, in its 1946 Biennial Report (p. 121):

"Segregation increases and accentuates racial tensions. It is worth noting that race riots in this country have seldom occurred in neighborhoods with a racially mixed population. Our worst riots have broken out along the borders of tightly segregated areas."

Racial restrictive covenants do not spring up spontaneously. They are fostered and promoted by neighborhood associations dominated by a few persons dedicated to the spread and perpetuation of racial prejudice.<sup>96</sup> These promoters play up race hatreds, condition Americans to accept racism as a way of life, and supply fertile ground for Fascist, Communist and other totalitarian groups who seek to exploit the weakness in the American social and political structure. Racial covenants "give legal sanction... and the appearance of respectability to residential segregation. This is a significant psychological force since race restrictive housing covenants are usually most prevalent among the middle- and upper-income groups in the community. As a result, other groups resort to less formal but equally effective means of keeping minorities out."<sup>97</sup> The sanction lent to covenants by court enforcement engenders

<sup>96</sup> In the District of Columbia there was recently established a "Greater Woodridge Land Covenants Alliance" to "expedite and make secure complete coverage of Woodridge [a section of Northeast Washington] with restrictive covenants." "Neighborhood News" (Official publication of the Rhode Island Citizens Association, January 1947). Several of these neighborhood associations are vigorously promoting the extension of restrictive covenants to land not now covered and seeking court enforcement of existing covenants. "Neighborhood News," *supra* (January 1947); "District of Columbia Citizen," D. C. Federation of Citizens Associations, (July 3, 1947). Restrictive covenants are now even being utilized to take away the jobs of janitors and custodians living in the basements of white apartment buildings. See *The Washington Post*, pp. 1, 4M (Sunday, Nov. 9, 1947).

<sup>97</sup> Robert C. Weaver, "Hemmed In" p. 3 (Amer. Council on Race Relations, 1945).

the belief that covenants create a legally enforceable right, a right which may be furthered by violence."<sup>99</sup>

**(f) Effects on municipal facilities, public institutions, and on the entire community.**

Because racial restrictive covenants force Negroes to reside in the oldest, most deteriorated, most densely populated and generally neglected areas of our cities, the over-used public and semi-public facilities available to Negroes are usually of inferior quality. Police, fire-protection, garbage removal, street cleaning, recreational, and other municipal services are inadequate, and vice is permitted to flourish.<sup>100</sup> Residential segregation leads to segregated schools, churches, YMCA's and other facilities even in cities where such separation has no legal basis.<sup>100</sup> It relegates Negroes to second class status in most community activities or eliminates them entirely; and it frustrates the development of their potential productive and creative ability.

Similarly pervasive are the effects of restrictive covenants on the entire community. Crime, disease, immorality

<sup>99</sup> Illustrative is the language of one McNerney speaking before the Dahlgren Terrace Citizens Association of Washington, D. C., on Sept. 17, 1947: "It's too bad you can't take a nice healthy club or a crow-bar and lay them in the gutter where they belong. But our only redress is in the courts. . . . The only way you can protect yourself is by covenant. . . . They have been upheld by the United States Supreme Court. . . . You're not being asked to use violence like we once had to use on R street." *The Washington Post* (Sept. 18, 1947). As long ago as 1932, the President's Conference on Home Building and Home Ownership pointed out: "The racial factors in the problem of housing are very largely those prompted by whites in an attempt to limit the areas in which Negroes may live. Attempts to crystallize this attitude in public opinion in some instances lead to racial conflict." *Negro Housing*, President's Conference on Home Building and Home Ownership, etc. p. 146 (1932).

<sup>100</sup> Thomas J. Woofert, Jr., "Negro Problems in Cities" Ch. XV (1928); Walter C. Reckless, "Vice in Chicago," pp. 190-196 (1933).

<sup>100</sup> Robert C. Weaver, "Community Action Against Segregation," *Social Action*, pp. 14-17 (Jan. 15, 1947); Weaver, "Northern Ways," 36 *Survey Graphic*, pp. 43-44 (January 1947).

and racial tensions cannot be confined in an urban community, and potentially affect all persons in the community. Furthermore, slums and their effects cost money. They increase the costs of disease, police and fire protection, courts, jails, relief burdens, etc. They absorb a high proportion of the total costs of municipal services, while yielding only a small proportion of the total real estate taxes. The Federal Works Agency has reported that in 1940 the slums and blighted areas in the larger cities of the Nation provided only 6% of the municipal revenue from real estate, but absorbed 45% of the service costs which the municipalities rendered.<sup>101</sup> Today in the larger industrial centers an ever increasing number of colored families, who are now restricted to the slums, could pay their way in housing and taxes. This loss in city revenue must be subsidized by the rest of the community.

Restrictive covenants also prevent proper urban redevelopment. Many slum areas are located in otherwise desirable sections near the center of the city. But artificially inflated incomes can be extracted from the slum tenants who are excluded by restrictive covenants from housing elsewhere and cannot escape. Therefore selfish forces seeking

<sup>101</sup> Federal Works Agency, "Postwar Urban Development" (1944). Illustrative is Navin's analysis of a blighted area of six census tracts in Cleveland showing that "the total cost of maintaining and operating this section for one year represented nearly 25/1000 of the appraised value of the land and buildings upon which the taxes are levied, and the potential yearly income does not exceed 26/1000 of the same sum"; that the area, housing only 2.5 per cent of the city's population, accounted for 14.5 per cent of the total fire protection cost, 6.5 per cent of the police protection cost, and 7.3 per cent of the cost of health services; and that while the per capita fire protection cost for the city as a whole was \$3.12, in this section it was \$18.27. Robert Bernard Navin, "Analysis of a Slum Area," pp. 61, 67, 69 (1934). See also Edith Elmer Wood, "Slums and Blighted Areas in the United States" (1935); Federal Emergency Administration of Public Works, "Urban Housing" (1937); Mabel L. Walker, "Urban Blight and Slums" (1938); Jay Rumney and Sara Shuman, "The Cost of Slums in Newark," Housing Authority of the City of Newark, p. 15 (1946).

to retain these profitable but obsolete and unhealthy slum housing investments, supported by organizations whose interest in segregation has been stimulated by restrictive covenants, resist and impede redevelopment and slum clearance.<sup>102</sup>

Even more important are the intangible losses. Restrictive covenants foster fear of Negroes and generate hate against the covenant sponsors; they encourage delinquency, political corruption, and crime; by sanctioning racism they bankrupt the moral and democratic values of a country founded on the principle that "all men are created equal"; and they directly repudiate the philosophy of free competition in our economy.

**(3) NEGRO RESIDENTIAL OCCUPANCY OR PROXIMITY DOES NOT "DEPRECIATE PROPERTY VALUES." USE OF PROPER OCCUPANCY STANDARDS, RATHER THAN RACIAL RESTRICTIVE COVENANTS, IS THE WAY TO PROTECT NEIGHBORHOOD PROPERTY VALUES.**

Exponents of racial restrictive covenants often attempt to justify them on the theory that the influx of Negro residents into a community "depreciates property values." That assertion is untrue, for at least three reasons:

(1) In many instances, as the testimony in this case shows (R. 264, 337, 338, 350, 352), the depreciation of the neighborhood has taken place before the Negro begins to buy into it. T. J. Wooster, Jr., has described the process as follows:<sup>103</sup>

"It was observed during the Chicago study and during this study, however, that the areas that are usually

<sup>102</sup> Lester Velie, "Housing: Detroit's Time Bomb," *Colliers*, p. 5 (Nov. 23, 1946); Robert C. Weaver, "Planning for More Flexible Land Use," 23 *Journal of Land & Public Utility Economics*, p. 32 (Feb. 1947).

<sup>103</sup> T. J. Wooster, Jr., "Negro Problems in Cities," p. 74 (1928). A joint survey of Negro residential occupancy in Philadelphia in 1939 by the Philadelphia Chapter of the Society of Residential Appraisers and the

penetrated by Negroes in their expansion are in neighborhoods that are already depreciating in value. There are numerous signs of such depreciation which often escape the observation of neighborhood residents who are not keen observers. Single family residences begin to give way to boarding-houses and apartments. Flats are built, and sometimes business or manufacturing establishments come into the neighborhood. Thus an exclusive residence section is cheapened. If one of these depreciating sections lies close to a Negro neighborhood, or if it has good transit service to places where Negroes work, the time finally comes when Negroes are willing to pay more for property there than the white occupants are, and the transition begins."

This cycle in the change of a residential neighborhood was discussed by Professor E. Franklin Frazier, head of the Department of Sociology of Howard University, in his testimony in this case (R. 350-353).

(2) The fact is that Negroes, because of their greater need for housing, are willing to pay more than whites for comparable housing.

The influx of Negroes frequently tends to raise the market value of the houses. Examples of areas where Negro occupancy has *increased* the values of the area are the Brookland subdivision in the District of Columbia, largely occupied by Negroes employed in the Government;<sup>104</sup> an area in Philadelphia recently analyzed by the Society of Residential Appraisers where the average sales

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Wharton School of Finance revealed that "By the time colored occupancy spreads to any neighborhood it is at least 30 years old and has the characteristics of physical and functional obsolescence that removes it from the category of a good neighborhood." Oscar I. Stern, "Long Range Effect of Colored Occupancy," The Review of the Society of Residential Appraisers, p. 5 (January, 1946). See also National Urban League, "Racial Problems in Housing," Bull. No. 2, p. 13 (Fall 1944).

<sup>104</sup> Robert C. Weaver, "Race Restrictive Housing Covenants," 20 Journ. of Land & Public Utility Economics 183, 191 (Aug. 1944).

price before colored occupancy was \$2800-\$3200, and about six months after the first colored purchase the average value for the same property was \$4,500-\$5,000;<sup>105</sup> and the Washington Park Area in Chicago where the front foot land values have maintained a higher level than similar nearby white areas.<sup>106</sup> Of course, as Gunnar Myrdal, T. J. Woofter, Jr., and others have shown,<sup>107</sup> if white property owners in a neighborhood become panicked by prejudice and rush to sell their property all at once, they would probably obtain a lower price on such hurried sales. But if the owners remain calm and hold on to their property, its sale value may even appreciate or at the very least will remain at the level justified by the age, lack of improvement of the buildings, and the general trend in land

<sup>105</sup> George W. Beebler, Jr., "Colored Occupancy Raises Values," *The Review of the Society of Residential Appraisers*, p. 4 (Sept., 1945).

<sup>106</sup> The Washington Park Area in Chicago, which passed from white to Negro occupancy in the late 1930's (see St. Clair Drake and Horace Cayton, "Black Metropolis," pp. 184-190 (1945)), is similar to the Hyde Park Area which was and is white occupied. The history of front foot land values in these two areas, as shown in the authoritative Olcott's Land Value Blue Book for Chicago, is as follows:

	Hyde Park Area (Drexel Blvd. and Ingleside Avenues between 64th and 67th Streets)	Washington Park Area (Champlain, Langley and Evans Avenues between 61st and 63rd Streets)
1928	\$150-200	\$150
1937	\$65-80	\$50-55
1946	\$40-45	\$45-50

Thus, in 1946 land values in the Negro occupied Washington Park area were higher than in the all-white Hyde Park area. From 1928, there had been 66% decline in Washington Park and 75% decline in Hyde Park. The explanation is largely the Negro's pressing demand for shelter, artificially stimulated by residential segregation.

<sup>107</sup> Gunnar Myrdal, "An American Dilemma, The Negro Problem, and Modern Democracy," p. 623 (1944); T. J. Woofter, Jr., "Negro Problems in Cities," p. 74 (1928); Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 U. of Chi. L. Rev. 198, 202 (Feb. 1945); Lester Velie, "Housing: Detroit's Time Bomb," *Colliers*, p. 16 (Nov. 23, 1946).

values. Whatever drop in value may initially occur is, in truth, caused by white panic to sell, not by Negro occupancy. The promotion of racial restrictive covenants to buttress residential segregation, because it invariably creates or stimulates fear of Negro occupancy, is a direct cause of such panic sales.

(3) Negroes can, and where given the opportunity do, maintain high occupancy standards. This has been shown by surveys of the National Association of Real Estate Boards, by experience in public housing, and by other students of housing. The October 24, 1944, pamphlet entitled "Realtor Work for Negro Housing," by the National Association of Real Estate Boards, contains the following questions and answers given in a survey of Negro housing which the Association made (see R. 275.276):<sup>108</sup>

<sup>108</sup> See St. Clair Drake and Horace Cayton, "Black Metropolis," pp. 207-208, (1945). Representative comments by individual realtors on their experiences with Negro housing, as set forth in the October 24, 1944 pamphlet of the National Association of Real Estate Boards, are:

Page 5: "... colored families if investigated in the same way as white families, will be found good mortgage risks. They have been, in all cases in our experience, honest and regular in their monthly payments. This may be in part because of the fact that they have so much at stake. In my opinion insurance companies, banks, building and loan associations, etc. might well undertake the building and financing of homes for negroes in large numbers."

"Negroes have their economic groups just the same as white people. Negroes in the same economic groups as whites are better pay because the demand for housing is so much keener. The most foolish practice for a Realtor is to class all Negroes in the same poverty-stricken, ignorant group. It would be just as ridiculous, and as destructive to the field of new housing, to class all white people as hillbillies or slum dwellers."

Page 6: "So-called 'Negro abuse of property' is a result of giving poor or modest Negro families tremendously old gingerbread homes or apartments and expecting them to make successful modern homes out of them. We can't do it. How can we expect them to? Moreover,

p. 1

*"1. Does the Negro make a good home buyer and carry through his purchase to completion?"*

*"Yes" was the almost unanimous reply. Only one city, a small Southern residential city, said 'No'.*

*"Very good," "Better than whites of the same economic status," some cities report. "Their tenacity and willingness to sacrifice to hold on to their homes far exceed the whites."*

*"2. Does he take care of his property if it is in good repair when he obtained it?"*

*when 18 families are jammed into a building where 6 lived before—or when 500 families live in a neighborhood where 100 lived before—there is bound to be overuse and consequent discouragement about maintenance of property."*

*"I believe it would be wise to recommend to the priorities board at Washington that in granting a builder priorities in cities where Negro housing is needed he must agree to construct at least 10% for the use of colored people. Perhaps 20 or 25% would be much closer to what we really should demand until we caught up with furnishing houses for the colored race."*

*"Our office is engaged in constructing 80 new homes for Negroes, 5-6 rooms, half brick frame and asbestos shingle on lots 40 by 105, about a mile and a half from the Fort Rouge plant where over 18,000 Negroes are employed. The Waterfall Construction Co. built 50 5-room frame and asbestos houses in the fall of '43, all sold to and occupied by Negroes. Homes are kept up so that one could not tell any difference from those occupied by members of the white race. We have in the neighborhood of 50 land contracts or mortgages on houses owned and occupied by Negroes. Our experience has been very satisfactory. These people pay just as promptly as any real estate owners we have ever had on our books. In many cases we have examined the property and have found it in very satisfactory condition.*

*"We believe that where Negroes are steadily employed at regular wages you will have no more trouble collecting from them than you will from anyone else."*

*Page 7: "Builders of Detroit will build 1,000 or 5,000 houses or apartments for Negroes if you find the site for us."*

"Yes", said 13 cities, including all the very large cities, and including all but one of the Southern cities. Five cities said 'No'.

"Several of the replies underscored the phrase 'if the property is in good condition when he obtained it.' One pointed out that relatively few properties sold to Negroes are in good condition.

P. 2

"Some comments: 'As good as whites of the same economic level.' 'New Negro-owned houses are comparable in neatness to any similar homes among whites.'"

"3. Is the Negro good pay as a tenant, or are more frequent collections necessary and losses greater?"

"6 cities (40%) said that the Negro was good pay, 'Good if not better than whites of the same economic status,' or 'No different from other groups for the better properties.' In 2 other cities (13%) some members had had favorable experience, other experiences were not so favorable."

"4. Does the Negro abuse property, or does he take as good care of it as other tenants of a comparable status?"

"He takes good care of it, in many cases better care than other tenants of his economic group, say 11 cities (73% of those reporting). Where Negroes have secured homes in good condition their maintenance is as good as their economic circumstances permit, the general testimony indicates, but the number of occupants is larger on the whole for Negro families and there is more doubling of families. This over-crowding where properties are already run down produces a condition that is bound to discourage good maintenance."

"5. Do you know of any reason why the great insurance companies of the country should not freely purchase mortgages upon homes and rented buildings to be occupied by Negroes, if such accommodations are properly located and managed?"

"There is no reason why they should not," said  $\frac{3}{4}$  of the cities, including all the metropolitan cities. "There is every reason why they should," a large city on the North-South border adds."

p. 3

"6. Do you think there is good opportunity for Realtors in the Negro housing field in your city?"

"Yes" say almost  $\frac{2}{3}$  of the cities (63%). "Splendid opportunity," "A wonderful opportunity," say Boards in some of the largest cities. "Yes, in neighborhoods that will care for shopping needs, give amusement centers, and the like," says another. "Yes, if building code revisions can be obtained. That is the only thing standing in the way of financing new building and rehabilitation," says another.<sup>108</sup>

Equally illustrative are the following experiences in public housing projects, inhabited by Negroes:

Chicago—*Ida B. Wells Home*:<sup>110</sup> Inhabited by 1662 families who had been selected for occupancy therein only if they met the following conditions: (a) annual family income not exceeding \$1104; (b) living in substandard homes; (c) at least 1 child under 16 (except for aged couples);

<sup>108</sup> This reference to the necessity of "building code revision" as "the only thing standing in the way of financing new building" presumably was intended to include restrictive covenants, since municipal building codes could not legally make any distinction between white and Negro occupancy. *Buchanan v. Warley*, 245 U. S. 60.

<sup>110</sup> Dorothy Pederson, "Public Housing Management," *The Journal of Property Management* pp. 405-415 (Sept. 1942), published by The Institute of Real Estate Management of the National Association of Real Estate Boards.

(d) citizens of the United States; (e) Chicago residents for 1 year; preference being given to families with lowest incomes and youngest children. These families assumed the responsibility for their own lawns and premises and even conducted a flower contest; they developed organized community activities such as juvenile clubs, Boy Scouts, Camp Fire Girls, weekly newspaper, cooperative store, etc. Although the median family income was less than \$775 annually, the rental loss for an entire year (1941) totaled \$156.49, only 1/19 of 1%; and even this miniscule rental deficit was liquidated by voluntary contributions from the residents of the community at a special gathering.<sup>111</sup>

Atlantic City, N. J.—277 unit *Stanley Homes Village*:<sup>112</sup> \$78.31 lost in rental collections during the first 5 years of operation. "The Village was erected on a site that once was declared to be the worst breeding place of crime and disease in the resort. The average yearly income of tenant families is \$800."

New Orleans, La.—896 unit *Lafitte Project*:<sup>113</sup> rental collection loss for October 1941 to September 30, 1942, was \$5.97, or .000043394%

St. Petersburg, Fla.—*Jordan Park*:<sup>114</sup> "The collection loss for the period January 1st to December 31st, 1941 was .52 of 1%, and for the period January 1st to August 31st, 1942 was .40 of 1%."

<sup>111</sup> Howard Vincent O'Brien, column in Chicago Daily News for January 12, 1943, reproduced in *Housing Management Bulletin*, Vol. 6, No. 1, p. 4 (Jan. 20, 1943) (publ. by Management Division, National Association of Housing Officials).

<sup>112</sup> Editorial in *Philadelphia Evening Bulletin*, reproduced in *Housing Management Bulletin*, Vol. 6, No. 1, p. 4, *supra* (Jan. 20, 1943).

<sup>113</sup> *Housing Management Bulletin*, Vol. 6, No. 1, p. 4, *supra* (Jan. 20, 1943).

<sup>114</sup> Fourth Annual Report, Housing Authority of City of St. Petersburg, "Management," quoted in *Housing Management Bulletin*, Vol. 6, No. 1, p. 4 *supra*, (Jan. 20, 1943).

A comprehensive study by the National Housing Agency indicates that Negro and white tenants in public housing, where they are of the same general economic classes, have comparable security, are selected according to the same rules, and have the opportunity to live in decent homes of similar quality, treat their property about alike, regardless of whether the housing is all white, all Negro, or for mixed racial occupancy.<sup>115</sup>

In her major article in *The Washington Post* of February 6, 1944, on Negro housing in the District of Columbia, Mrs. Agnes E. Meyer, after describing the wretched housing accommodations of much of the Negro population of the District of Columbia, shows how former Negro slum dwellers have responded to improved housing facilities provided by the National Capital Housing Authority.<sup>116</sup>

"In the early projects constructed by the Alley Dwelling Authority, now called the National Capital Housing Authority several projects were necessarily for Negroes, as they are the majority of slum dwellers.

"As some of these apartments have been in use for four years, the progress of the families is not of long duration, but already marked. In Hopkins pl., where the new development of NCHA doubled the population, there used to be three or four arrests per week. There was only one in the last year.

"Better health, especially among children, is noticeable, in the NCHA housing.

<sup>115</sup> Corienne K. Robinson, Housing Analyst, National Housing Agency "Racial Factors in Rent Payments, Property Maintenance, and Property Values as Reflected in Public Housing Experience," (1943) (Copy on file in library of Public Housing Administration).

<sup>116</sup> Agnes E. Meyer, "Negro Housing—Capital Sets Record for U. S. in Unalleviated Wretchedness of Slums," p. 1-B, section II, Sunday, February 6, 1944, *The Washington Post*.

"In one case the National Capital Housing Authority took the total population of a slum area, 116 families. They were grouped together, in two different projects. Not only was there no friction with neighbors, but now one type of family cannot be told from the other, so quickly did the slum-dwellers conform to the better manners and demeanor of the more fortunate group."

In recent years, realtors and housing officials have "discovered" that Negroes with stable incomes are good risks for home ownership and occupancy (R. 276). The January 1946 issue of *Architectural Forum* ("Good Neighbors") sums this up as follows:

"FHA itself has said: 'On the basis of credit analysis we consider Negro mortgagors as good or better risk than white mortgagors.' Negro spokesmen have pointed out that restrictions on type of occupancy, requiring building owners not to sell or lease except to single families, would be a far more effective check on property deterioration [than racial restrictive covenants]. The National Association of Real Estate Boards has collected opinions of its members, all giving Negro owners and renters a good risk-rating."

The facts as thus attested by public and private housing authorities, as well as by the National Association of Real Estate Boards, demonstrate that Negro occupancy does not, of itself, "depreciate property values." It is not race which causes deterioration of Negro neighborhoods into slums. Rather, the major cause is residential segregation which results in neighborhood congestion and overcrowding of Negroes into inadequate dwellings, their inability to get better housing, and owners' abandonment of good maintenance as unnecessary to attract renters or buyers in this acute Negro housing shortage.

Furthermore, the proscription of all Negroes by racial restrictive covenants in an attempt to "protect property

"values" is entirely inappropriate. There has been no testimony whatever in these cases, other than general assertions without any supporting facts, that the plaintiffs (respondents herein) would suffer any pecuniary damage from Negro or Indian occupancy (R. 202, 206, 301, 302). Indeed, the principal plaintiff (Hodge) testified that he would not sell his "depreciated" property even at triple the price he paid for it (R. 303-304, 68); and the testimony showed, and the plaintiffs admitted, that the grantee petitioners have kept up and renovated their homes very well (R. 190, 202, 205-206, 243, 268, 283, 286-287, 312).

The covenants here are not narrowly drawn to exclude only those buyers who might reasonably be expected to affect adversely the value of property. Rather, the restrictive covenants are based solely on race. As this Court so pithily state in *Buchanan v. Warley*, 245 U. S. 60, 82:

"It is said that such acquisitions by colored persons depreciate property owned in the neighborhood by white persons. But property may be acquired by undesirable white neighbors or put to disagreeable though lawful uses with like results."

The attempt to secure enforcement of the covenants, therefore, is based solely on prejudice, is directed solely to racial discrimination, and is in no way justified by any "depreciation of property values" assumption. This is clearly shown from the following excerpt from the testimony of Mrs. Lena A. Murray Hodge, the chief protagonist of the restrictive covenants in these cases:

(R. 38)

"Q. And you would prefer that untidy person to a Negro, no matter how educated or cultured?"

"A. As long as they are white, I would prefer them."

"Q. No Negro, no matter how, or whether he might

be Senator or Congressman, it would not make any difference to you?

"A. It wouldn't make any difference.

"Q. Even if the white man just came from jail you would prefer him?

"A. Because he is white and I am white."

(R. 180-181)

"Q. Mrs. Hodge, since you don't know what this lady is (indicating lady in rear of court room) at the moment, if she bought you would have no objection whatsoever?

"A. Not until I found out definitely what she was.

"Q. Then, although she had not—

"A. What?

"Q. —although she had not changed a bit in her conduct or anything, if later you heard she was a Negro, you would object?

"A. I certainly would.

"Q. Although she would be the same one and you would not object, and on appearance you can't tell whether she is white or colored?

"A. I would not object until I found out.

"Q. It is the label of "Negro"?

"A. Not entirely, it is the color—yes, the label.

"Q. It can't be the color, because you can't tell whether that lady is white or colored.

"A. Yes.

"Q. So it is the label?

"A. Yes.

"Mr. Urciolo: Mrs. Hodge, in other words, if I am labeled Negro and I want to move into one of those houses you would ask that I be put out?

"The Witness: I would."

Racial restrictive covenants do not protect against deterioration in occupancy standards in the areas covered by the covenants; and by contributing to overcrowding and segregation, they lead to the undoing of property standards in other areas. "If, instead of restrictions on account of race, creed, and color, there were agreements binding property owners not to sell or lease except to single families, barring excessive roomers, and otherwise dealing with the type of occupancy, properties would be better protected during both white and Negro occupancy. This would both protect the integrity of the neighborhood and afford an opportunity for the member of a minority group who has the means and the urge to live in a desirable neighborhood. It would also prevent, or at least lessen, the exodus of all whites upon the entrance of a few Negroes—and *this is what depresses property values.*"<sup>117</sup>

#### (4) BROAD IMPLICATIONS OF THESE CASES: INTERNATIONAL, NATIONAL, MORAL

##### (a) International Importance

In his Foreword to Gunnar Myrdal's comprehensive study of the American Negro, Mr. Frederick P. Keppel, President of the Carnegie Corporation of New York has stated, "It is a day . . . when the eyes of men of all races

<sup>117</sup> Robert C. Weaver, "Hemmed In" (Amer. Council on Race Relations, 1945); Weaver, "Housing in a Democracy," 244 Annals of the American Academy of Political and Social Science 95, 99 (March, 1946); Weaver, "Community Action Against Segregation," 13 Social Action 4, 23 (Jan. 15, 1947) (publ. by Council for Social Action of the Congregational Christian Churches); National Urban League, "Racial Problems in Housing," Bull. No. 2 (Fall, 1944) p. 15; Weaver, "A Tool for Democratic Housing," The Crisis, vol. 54, No. 2, p. 47, 48 (Feb. 1947). This depression of values is only temporary, induced by the panic. As soon as the neighborhood stabilizes itself, the general excess of demand for Negro housing over supply restores the values to a level usually higher than the former white market. Lester Velie, "Housing: Detroit's Time Bomb," Colliers, November 23, 1946, p. 16.

the world over are turned upon us to see how the people of the most powerful of the United Nations are dealing at home with a major problem of race relations."<sup>118</sup> He thus highlighted the fact that racial segregation and discrimination in the United States are widely advertised throughout the world<sup>119</sup> and embarrass the conduct of foreign affairs of the United States. For it must be remembered that the "white" peoples constitute a minority of the peoples of the world.<sup>120</sup> The international aspects of racial discrimina-

<sup>118</sup> Foreword by Mr. Keppel in Gunnar Myrdal, "An American Dilemma, The Negro Problem and Modern Democracy," p. viii (1944).

<sup>119</sup> "To Secure These Rights," The Report of the President's Committee on Civil Rights, p. 147 (Govt. Printing Office 1947). The following Associated Press dispatch appeared in *The Evening Star*, of Washington, D. C. (p. A-24, August 21, 1947):

**"RUSSIAN NEWSPAPER HITS TREATMENT OF NEGROES  
HERE**

(By the Associated Press)

"MOSCOW, Aug. 21.—The newspaper Trud said today that Negroes in Washington were 'prohibited from attending movies, restaurants, barber shops and beaches where whites were present.'

"Let us remember, this is all taking place in the city which, according to reference books, is the residence of the President and the Capitol building in which Congress sits," the article continued.

"Trud asked:

"Will Washington 'democrats' dare restrict the Liberian ambassador to movies and restaurants only in the Negro ghetto?'"

The New York Times (June 2, 1947, Editorial Page, p. 24, "Missionaries of Prejudice"), commented as follows on a dispatch from Sweden concerning a fight in the Port of Malmoe, Sweden when American sailors from Texas attempted to impose their social code against American Negro sailors from another ship at a Swedish dance hall: "... the communist newspapers in Russia will play it up ... the sailors from Texas have made the task of winning converts to American ideals of democracy just that much harder."

<sup>120</sup> See the November 1942 issue of 31 *Survey Graphic*, entitled "Color: Unfinished Business of Democracy," dealing with racial problems and attitudes both in the United States and throughout the world. The fact is that "In many countries the color of a man's skin is little more important than the color of his hair and in many others the favored color is not white." Justice Edgerton, dissenting below (R. 432; 162 F. (2d) 233, 245).

tion are summarized in the Final Report (June 28, 1946) of the Fair Employment Practice Committee (p. 6):

"Expert testimony in a FEPC hearing in September 1943 showed that Berlin and Tokyo used racial incidents in the United States as anti-American propaganda to the colored peoples of Asia and to Europe.

"During the war the Mexican Chamber of Deputies, the counterpart of our House of Representatives, established a special committee 'for the purpose of keeping the attention of the Mexican Congress focused on discrimination against Mexicans in the United States.' Mexico also placed restrictions on our importation of badly needed Mexican labor because of American discriminatory practices.

"The Congress of the Inter-American Bar Association held in Mexico City in August 1944 took notice of discrimination as an international problem in the Western Hemisphere. All except three Latin-American republics, through their representatives, went on record as condemning discrimination and passed a resolution recommending to the governments of the American republics that a treaty be entered into pledging each country not to permit the citizens of other American states to be discriminated against within its territory.

"At the first London meeting of the United Nations, charges of discrimination against South American nationals were raised against the United States.

"The fact that foes have used our discriminatory practices against us, and friends have chided us for uncorrected discrimination, suggests the importance of coming with clean hands into the council of a world composed two-thirds of colored peoples."

The international repercussions of racial discrimination in the United States have posed major problems for the States adjoining Mexico,<sup>121</sup> and even more for the United

<sup>121</sup> The Attorney General of the State of California stated that the agreement between the United States and Mexico for the importation of Mexican agricultural labor during World War II was frustrated by the

States as a whole. On several occasions, a majority of the nations in the United Nations Assembly have joined in voting against the United States when issues of racial discrimination were involved.<sup>122</sup> Acting Secretary of State Dean Acheson stated,<sup>123</sup> on May 8, 1946, that—

“the existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries. We are reminded over and over by some foreign newspapers and spokesmen, that our treatment of various minorities leaves much to be desired. While sometimes these pronouncements are exaggerated and unjustified, they all too frequently point with accuracy to some form of discrimination because of race, creed, color, or national origin. Frequently we find it next to impossible to formulate a satisfactory answer to our critics in other countries; the gap between the things we stand for in principle and the facts of a particular situation may be too wide to be bridged. An atmosphere of suspicion and resentment in a country over the way a minority is being treated in the United States is a formidable obstacle to the development of mutual understanding and trust between the two countries. We will have better international relations when these reasons for suspicion and resentment have been removed.

“I think that it is quite obvious . . . that the existence of discriminations against minority groups in the United States is a handicap in our relations with other countries. The Department of State, therefore, has good reason to hope for the continued and increased

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widespread discrimination practiced against Mexican agricultural workers in Texas. Hon. Robert W. Kenny, “The Inter-American Bar and Racial Equality,” 4 *Law. Guild Rev.*, No. 4, pp. 7, 8 (July-Aug. 1944).

<sup>122</sup> Ferdinand Kuhn, Jr. “Working Backstage at U. S. Expense—Red ‘Tolerance’ Pose is Winning Colonials,” *The Washington Post*, sec. 11, p. 1-B (Sunday, Nov. 2, 1947).

<sup>123</sup> Letter to the Fair Employment Practice Committee, quoted in the Final Report of June 28, 1946, by the F.E.P.C., p. 6; also quoted in “To Secure These Rights,” The Report of the President’s Committee on Civil Rights, pp. 146-147 (Govt. Printing Office, 1947).

effectiveness of public and private efforts to do away with these discriminations."

The issuance of an injunction by a duly constituted court in the United States enforcing the segregation intended by a racial restrictive covenant, "no matter what gloss be given it, amounts to official" government action imposing a discrimination solely on the basis of race, and the world so views it.<sup>124</sup> Particularly does such action appear symbolic of the Nation when it occurs in the District of Columbia, the Capital of the Nation.<sup>125</sup> But it is more than symbolism alone. Visiting personages and officials of foreign nations have personally noted, and often suffered from, racial restrictions which prevent their occupying residences in the District of Columbia,<sup>126</sup> as well as in other major cities of the Nation. With the increasing number of such visitors, these restrictions assume even greater importance in the foreign relations of the United States. "The nation as a whole, would be held to answer."<sup>127</sup> As the President's Committee on Civil Rights has said in its Report ("To Secure These Rights") (p. 148): "*The United States*

<sup>124</sup> See *United States v. Pink*, 315 U. S. 203, 232.

<sup>125</sup> See Joseph D. Lohman and Edwin R. Embree, "The Nation's Capital," 36 *Survey Graphic* p. 33 (Jan. 1947).

<sup>126</sup> "To Secure These Rights," The Report of the President's Committee on Civil Rights, p. 95 (Govt. Printing Off., 1947).

<sup>127</sup> *United States v. Pink*, 315 U. S. 203, 232; *Chy Lung v. Freeman*, 92 U. S. 275, 279; cf. *United States v. California*, 331 U. S. 67, 67 Sup. Ct. 1658; *In re Drummond Wren*, [1945] 4 Dom. L. R. 674 (Supreme Court of Ontario). On November 9, 1947, the Minister of Agriculture of the Republic of Haiti, coming to a national Agriculture Conference in the United States, was refused lodging "for reason of color." He withdrew from the Conference, and announced that his Government may lodge a formal protest to the Department of State. *The Washington Post*, p. 11 (Nov. 13, 1947); *The New York Times*, p. 15 (Nov. 13, 1947). Trade relations between India and the Union of South Africa were recently severed because of the current dispute concerning the treatment of colored people in South Africa. See *The New York Times*, p. 13 (Nov. 13, 1947).

*is not so strong, the final triumph of the democratic ideal is not so inevitable that we can ignore what the world thinks of us or our record."*

**(b) Racial Restrictive Covenants Are Widespread, Capricious, Extreme; They Create a Divisive, Caste Society, and Constitute a Direct Danger to Our National Unity.**

Restrictive covenants, which have already forced Negroes into American ghettos outside of which they are not permitted to live, have also been directed against many other racial and religious groups.<sup>128</sup> The only standards and limits of these covenants have been the caprice and prejudice of the persons creating the covenants. Thus, covenants have been applied in the United States against persons of Mexican, Armenian, Hindu, Ethiopian, Japanese, Chinese, Korean, Arabian, Filipino, Persian, Syrian, Greek or Spanish ancestry, as well as "non-Caucasians", Latin Americans, Jews, American Indians, Hawaiians, Puerto Ricans, and other groups, irrespective of their American citizenship or the use they would make of the land. There have been covenants against sale to or occupancy

"by Greeks, Assyrians or by any person who belongs to any race, creed or sect which holds, recognizes or observes any day of the week other than the first day of the week to be the Sabbath or his Sabbath, or any corporation or clan composed of or controlled by any such person",<sup>129</sup>

<sup>128</sup> Charles Abrams, "Homes for Ayrans Only," *Commentary*, p. 241 (May, 1947).

<sup>129</sup> Covenants covering the Prospect Hills subdivision in Roanoke, Virginia; see Loren Miller, "The Power of Restrictive Covenants," 36 *Survey Graphic* 46 (Jan. 1947).

"descendants of former residents of the Turkish Empire";<sup>130</sup>

"Jews or persons of objectionable nationality";<sup>131</sup>

"persons of a race whose death rate is at a higher rate than that of the white or Caucasian race";<sup>132</sup>

"any person of the Semitic Race, blood, or Jews, Hebrews, Persians, and Syrians".<sup>133</sup>

Many of these covenants provide that the restriction does not apply to occupancy by the restricted persons if they are there as domestic servants.<sup>134</sup>

The extremes to which these covenants have been pushed is illustrated by the currently notorious cases of *Garber v. Tushin* in Bethesda, Maryland,<sup>135</sup> and *Pearce v. Crocker*, in Hollywood, California.<sup>136</sup>

<sup>130</sup> See D. O. McGovney, "Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional," 33 Calif. L. Rev. 5, 15 (1945); Loren Miller, "Race Restrictions on Ownership or Occupancy of Land," 7 Lawy. Guild Rev. 90 (May-June 1947).

<sup>131</sup> This covenant was involved in a Canadian case: *In Re Drummond Wren* [1945] 4 Dom. L. R. 674 (Supreme Court of Ontario).

<sup>132</sup> Declaration of covenant dated Nov. 17, 1936, recorded by Waldo M. Ward on Nov. 25, 1936, Liber 648, folio 192, affecting lots in Northwood Park, Montgomery County, Maryland.

<sup>133</sup> Covenant covering Bapnockburn Heights development, Maryland, involved in *Garber v. Tushin*, Circuit Ct. of Montgomery County, Maryland, cited in the next two footnotes.

<sup>134</sup> Examples of such exception for servant occupancy are in the covenants in the *Tushin* and *Crocker* cases, cited in the next two footnotes, and in the covenant involved in *Trustees of the Monroe Avenue Church of Christ v. Perkins*, No. 153, Oct. Term, 1947, U. S. Supreme Court. See also D. O. McGovney, "Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional," 33 Calif. L. Rev. 5, 15 (1945). This servant occupancy exception is a standard provision in the deeds issued by many real estate developers. See *Covenants of Chevy Chase Land Co. of Montgomery County, Md.*, on block 7, Section 5-A, Chevy Chase, Maryland, Plat 1371, recorded in Plat-Book 22.

<sup>135</sup> *Garber v. Tushin*, Equity 12894, Circuit Ct. of Montgomery County, Maryland, complaint filed April 11, 1947. See *The Washington Post*, pp. 1, 3 (Sept. 17, 1947).

<sup>136</sup> *Pearce v. Crocker*, in the Superior Court of California in Los Angeles (No. 508,294).

In the *Tushin* case, the plaintiffs sought an injunction to prevent Mrs. Tushin, who is non-Jewish and against whom the covenant admittedly does not apply, from permitting her husband, who is Jewish, to occupy the home which they own. Presumably their three minor children would also be subject to ouster with him. In the *Crocker* case, the plaintiffs obtained a judgment of eviction which prevents Mr. Crocker, a white man against whom the covenant does not apply, from permitting his wife (a  $\frac{3}{4}$  Seneca Indian) and their three daughters to reside with him in the home which Mr. and Mrs. Crocker own. A Notice of Appeal in the *Crocker* case was filed on November 4, 1947. In both cases, the plaintiffs, alleging that the continuing occupancy of Mr. Tushin and Mrs. Crocker, respectively, was causing the plaintiffs "irreparable damage," were asking the court to separate man and wife and children!

The *Tushin* and *Crocker* cases thus go beyond the notorious Nazi "Nuremberg Laws" under which none of the members of a similar mixed-marriage family would have been required under Nazi-German law, solely because of their race or creed, to move from their home.<sup>137</sup>

The results of continued judicial enforcement of these covenants were vividly appraised by Justice Mackay of the Supreme Court of Ontario:<sup>138</sup>

"... the consequences of judicial approbation of such a covenant are portentous. If sale of a piece of land can be prohibited to Jews, it can equally be prohibited to Protestants, Catholics or other groups or denominations. If the sale of one piece of land can be so prohibited, the sale of other pieces of land can likewise be prohibited. In my opinion, nothing could be more cal-

<sup>137</sup> *Nazi Conspiracy and Aggression*, vol. 3, pp. 607-608, Part B, I 1a; vol. 4, pp. 10-11 (1939) *Reichsgesetzblatt*, Part 1, p. 864) Art. 7, sec. 1 (Govt. Printing Off., 1946).

<sup>138</sup> *In re Drummond Wren*, 4 Dom. L. R. 674 [1945], Ontario Reports [1945] 778, 783 (invalidating a restrictive covenant against Jews).

culated to create or deepen divisions between existing religious and ethnic groups in this province, or in this country, than the sanction of a method of land transfer which would permit the segregation and confinement of particular groups to particular business or residential areas, or conversely, would exclude particular groups from particular business or residential areas."

Indeed, if people may be restricted from land occupancy because of their racial or ethnic ancestry (e.g. Negroes, American Indians, Hawaiians, Filipinos, Mexicans, Chinese, etc.), and if people may be so restricted because of their religion (e.g., Jews, Catholics, Mormons, Seventh Day Adventists, etc.), similar restrictive covenants could be applied to registered Democrats or registered Republicans, to Masons, to union men or to non-union men, to foreign-born people whether American citizens or not, and to stockbrokers, bankers or even lawyers. Each of these groups has at times been the object of resentment or prejudice by sizable portions of many communities. And if it is lawful for courts to enforce private conspiracies designed to deprive a racial, ethnic or religious group of housing, i.e., shelter, would it be less lawful similarly to deprive such groups of food or clothing? "Housing is a necessary of life," said Mr. Justice Holmes in *Block v. Hirsh*, 256 U. S. 135, 156 (1921). It is as much a necessity for members of a racial or religious minority as it is for all others.

Prior to World War I, there was little enforced residential segregation in the District of Columbia,<sup>139</sup> or even in cities like Chicago where the Negro ghetto is today surrounded by an iron band of restrictive covenants.<sup>140</sup> Judi-

<sup>139</sup> *The Washington Post*, editorial page (Oct. 25, 1947) (letter of Ethel Graham-Greene).

<sup>140</sup> Robert C. Weaver, "Hemmed-In," p. 1 (Amer. Council on Race Rel., Chicago, 1945); St. Clair Drake and Horace Cayton, "Black Metropolis," p. 176 (1945): "In 1910 there were no communities [in

cial decisions enforcing such covenants have lent legal sanctions and the appearance of respectability to residential segregation. Realtors have pledged themselves in their "Code of Ethics" to enforce racial residential segregation. Section 5, paragraph 15, "Code of Ethics" of Washington Real Estate Board (Def. Exh. No. 5; R. 274). Recent newspaper reports of neighborhood association meetings indicate active and systematic efforts to extend the covenants to land not now covered.<sup>141</sup> If covenants continue to receive judicial sanction and enforcement, all indications are that "in a single generation, all new homes in the nation may be barred to designated minorities—what is more, probably will be."<sup>142</sup> Indeed, it may take even less than a generation. The lingering doubt as to the enforceability of the covenants has heretofore often served as a deterrent to their creation. If they are now held enforceable, that deterrent would be removed, and, with the impetus which such a decision by this Court would give to the creation of covenants, covenanting would approach a seamless pattern.

Equally sinister implications exist in the restriction which provides that members of designated races and creeds may not seek accommodations as individuals, but may live in the community only if they become domestic servants.

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Chicago] in which Negroes were over 61% of the population. More than  $\frac{2}{3}$  of the Negroes lived in areas less than 50% Negro, and a third lived in areas less than 10% Negro. By 1930, 87% of the Negroes lived in areas over half Negro in composition. A decade later 90% were in districts of 50% or more Negro concentration. Almost  $\frac{2}{3}$  (63%) lived where the concentration was from 90% to 99% Negro."

<sup>141</sup> *The Evening Star*, Washington, D. C. (Nov. 9, 1947), p. A-10; (Sept. 23, 1947) p. A-4; (Oct. 7, 1947) editorial page; (Oct. 8, 1947) p. A-6; (Oct. 14, 1947) p. A-6; (Oct. 16, 1947) p. A-6; (Oct. 21, 1947) p. A-14; *The Washington Post*, (Oct. 15, 1947) p. 1, 11; (Sept. 18, 1947) p. 1; (Nov. 9, 1947) pp. 1, 4M.

<sup>142</sup> Charles Abrams, "Homes for Aryans Only," *Commentary*, pp. 421, 422 (May, 1947).

### (c) Religious and Moral Aspects.

Racial restrictive covenants have been described in a leading Catholic journal as "contracts to sin."<sup>143</sup> Bishop Bernard J. Sheil of Chicago has said that "... restrictive covenants ... are diametrically and blatantly opposed to every concept of Christian ethics."<sup>144</sup> On October 17, 1947, the American Unitarian Association General Conference overwhelmingly approved a resolution condemning segregation as "a violation of the principles implicit in the fatherhood of God and the brotherhood of man."<sup>145</sup> On March 7, 1946, the Postwar Conference of the Federal Council of the Churches of Christ in America stated that the Federal Council "renounces the pattern of segregation in race relations as unnecessary and undesirable and a violation of the Gospel of love and human brotherhood."<sup>146</sup>

The Catholic church has attacked segregation and called upon Catholics to "join with their neighbors in helping to integrate Negro residents on the basis of good neighborliness."<sup>147</sup> Leaders of Jewish organizations have condemned

<sup>143</sup> John Doebele, "Covenant to Create Slums," 75 America 90 (Catholic Review of the Week) (May 4, 1946).

<sup>144</sup> Bishop Bernard J. Sheil, "Restrictive Covenants versus Brotherhood," Address at Conference for the Elimination of Restrictive Covenants, held in Chicago May 10-11, 1946, printed in *Racial Restrictive Covenants*, pamphlet issued by Chicago Council Against Racial and Religious Discrimination, 123 W. Madison St., Chicago, p. 30. Bishop Sheil further said: "The God-given right of every human being to an existence on a plane equal to his dignity as a child of God must of necessity be our guiding rule. Yet, the whole theory of restrictive covenants ruthlessly ignores this divinely ordained principle." p. 28.

<sup>145</sup> *The Evening Star*, Washington, D. C., Oct. 18, 1947, p. A-7.

<sup>146</sup> Biennial Report (1946), Federal Council of Churches of Christ in America, p. 50. This statement was adopted by the General Council of the Congregational Christian Churches of the United States meeting at Grinnell, Iowa, in June, 1946. 13 Social Action 27 (Jan. 15, 1947) (published by Council for Social Action of the Congregational Christian Churches).

<sup>147</sup> National Catholic Welfare Conference, Washington, "Seminar in Negro Problems in the Field of Social Action," p. 33 (1946).

restrictive covenants as "pernicious", "shocking examples of un-American bigotry."<sup>148</sup>

**(5) THIS COURT'S DECISION DECLARING RACIAL RESTRICTIVE COVENANTS UNENFORCEABLE WILL NOT CAUSE REVOLUTIONARY DISTURBANCES.**

A hue and cry will be raised in some quarters that outlawing restrictive covenants will ruin property values, lead to race riots and wreak havoc generally in the community.<sup>149</sup> The Record in these cases puts the lie to these arguments. Respondents themselves admit that they have had no trouble with the petitioners whom they seek to evict (R. 83-84, 93, 135, 219, 243, 297); that their peace of mind has not been disturbed (R. 206); and that Hurd (the Mohawk Indian), the Negro petitioners, and the other Negro inhabitants of the block keep up their properties (R. 94, 202, 205, 311). It is undisputed that property in the neighborhood has a 30% greater market value when sold to Negroes than to whites (R. 118, 157, 261-263, 340). Plaintiffs sought and obtained the injunctions in the cases at bar, not on the facts, but on their prejudices<sup>150</sup> (R. 38, 39, 98, 206, 298-299).

The people who see the end of the white race in America if restrictive covenants are outlawed have their minds already made up and closed. They are the same people or same type of people who predicted chaos when this Court was called on to rule in *Missouri ex rel. Gaines v. Canada*,

<sup>148</sup> Rabbi Paul Richman, Washington B'nai B'rith Anti-Defamation League, *The Evening Star*; Washington, D. C., p. A-14 (Sept. 13, 1947); Justice Meier Steinbrink, national chairman, Anti-Defamation League, B'nai B'rith, *The Washington Post*, p. 2B (October 7, 1947); Hymen Goldman, President, Jewish Community Council of Washington, *The Washington Post*, editorial page (Oct. 7, 1947).

<sup>149</sup> *The Washington Post* (November 9, 1947) pp. 1, 4M: "500 Attend Rally to Prevent Sale of Homes to Negroes."

<sup>150</sup> Significantly, the trial court in its findings of fact made no reference to depreciation of property values or any other kind of damage to plaintiffs (R. 379-383).

305 U. S. 337, that a Negro could not be excluded from a State university if he desired to take a course offered there to white students but not offered elsewhere in the State to Negroes. They predicted that political revolution and election by bullet instead of by ballot would result from this Court's decision in the Texas white primary case, *Smith v. Allwright*, 321 U. S. 649, forbidding denial to Negroes of the right to vote in a primary which is an essential part of the electoral process. They predicted wholesale riots when this Court ruled that a State "Jim-Crow" law did not apply to interstate bus passengers. *Morgan v. Virginia*, 328 U. S. 373. Yet their phobias turned out to be fantasies in those cases.

Similarly, there is no cause for alarm here.

The first question which may properly be asked those who see disaster unless restrictive covenants are enforced is: what kept the communities stabilized before the device of restrictive covenants was evolved. Restrictive covenants are a comparatively recent development. The first reported case involving a Negro was in 1915.<sup>151</sup> Restrictive covenants came into prominence as "private zoning ordinances" only after this Court in 1917 struck down public zoning ordinances against Negroes in *Buchanan v. Warley*, 245 U. S. 60. Before then, equilibrium was obtained thru the operation of the natural laws governing city growth and population movement. These same laws will be in constant operation after "private zoning" thru restrictive covenants is sent the same way that public zoning was in *Buchanan v. Warley* (R. 337, 338, 350-353).

The unfortunate truth is that Negro ghettos will not disappear overnight if judicial enforcement of restrictive covenants is denied. The fringe and vulnerable areas on the fringe will be immediately affected, but the general

<sup>151</sup> *Queensborough Land Co. v. Casaux*, 136 La. 724, 67 So. 641 (1915).

characteristics of the city's residential districts will show no perceptible immediate change. Nobody will be forced to sell; and the buyer must still be ready, able and willing to buy. All that elimination of restrictive covenants will do is to remove an intolerable, artificial restrictive barrier<sup>152</sup> and permit the functioning of the economic and social forces which affect and control city growth.<sup>153</sup>

**C. THIS COURT HAS NOT HERETOFORE DECIDED THE QUESTIONS WHICH ARE HERE PRESENTED—ANALYSIS OF CORRIGAN v. BUCKLEY, 271 U. S. 323 (1926).**

Only two cases involving racial restrictive covenants have heretofore been decided by the Supreme Court of the United States.<sup>154</sup> One was decided solely on the question whether a judgment in a prior collusive suit to enforce the covenant was *res judicata* as to persons not parties to that collusive suit.<sup>155</sup> The other was *Corrigan v. Buckley*, 271 U. S. 323 (1926).

The erroneous impression that this Court has ruled on the questions here urged is based on misinterpretation of

<sup>152</sup> *Grady v. Garland*, 67 App. D. C. 73, 89 F. 2d 817, at 819: "It furnishes a complete barrier against the eastward movement of colored population into the restricted area—a dividing line."

<sup>153</sup> "Both the buildings and the people are always growing older. Physical depreciation of structures and the aging of families constantly are lessening the vital powers of the neighborhood. Children grow up and move away. Houses with increasing age are faced with higher repair bills . . . These internal changes due to depreciation and obsolescence in themselves cause shifts in the location of neighborhoods." Homer Hoyt, "The Structure and Growth of Residential Neighborhoods in American Cities" (Federal Housing Administration, 1939) p. 121.

<sup>154</sup> This Court has denied petitions for writs of certiorari in several prior cases involving racial restrictive covenants. But as this Court has said (Justice Holmes): "The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times." *United States v. Carver*, 260 U. S. 482, 490; *Atlantic Coast Line R. R. Co. v. Powe*, 283 U. S. 401, 403, 404.

<sup>155</sup> *Hansberry v. Lee*, 311 U. S. 32.

*Corrigan v. Buckley.* In that case, Corrigan, Buckley and others had executed an agreement that no part of the properties covered would be sold to, or occupied by, Negroes. Later, Corrigan contracted to sell one of the lots to Curtis, a Negro. To enforce the covenant, Buckley filed a bill in equity in the trial court of the District of Columbia to enjoin Corrigan from selling, and Curtis from buying, occupying or selling, the lot. The defendants moved to dismiss on the sole ground that the "covenant is void," because in conflict with the Constitution and the laws of the United States and with public policy. No other issue was presented by the pleadings or the arguments in the lower courts. No question was raised as to the constitutional propriety of judicial enforcement of the covenant. These motions were overruled, the injunction was granted, and the Court of Appeals affirmed.

*Corrigan v. Buckley* reached the Supreme Court on appeal not on certiorari. Section 250 of the Judicial Code as it then read authorized appeals in six types of cases, including (Third) "cases involving the construction or application of the Constitution of the United States . . ." and (Sixth) "cases in which the construction of any law of the United States is drawn in question by the defendant." Act of March 3, 1911, 36 Stat. 1087, 1159. The defendants based their appeal solely on the contention that the covenant was "void" because it violated the 5th, 13th and 14th Amendments, because it was contrary to public policy; and because it was forbidden by Sections 1977, 1978, 1979, Rev. Stats.<sup>156</sup> This Court specifically stated: "Under the plead-

<sup>156</sup> 271 U. S. 323, 328-329: "The defendant Corrigan moved to dismiss the bill on the grounds that the 'indenture or covenant made the basis of said bill' is (1) 'void in that the same is contrary to and in violation of the Constitution of the United States,' and (2) 'is void in that the same is contrary to public policy.' And the defendant Curtis moved to dismiss the bill on the ground that it appears therein that the indenture or covenant 'is void, in that it attempts to deprive the defendant, the said Helen

ings in the present case the only constitutional question involved was that arising under the assertions in the motions to dismiss that the indenture or covenant which is the basis of the bill, is 'void' in that it is contrary to and forbidden by the Fifth, Thirteenth and Fourteenth Amendments." 271 U. S. 323, 329-330.

The Supreme Court held: *First*, that the 5th and 14th Amendments dealt only with governmental action, not with actions of private persons; that the 13th Amendment dealt only with involuntary servitude; and therefore that the contention that these Amendments made *the covenant void* raised no substantial question, 271 U. S. 323, 330. *Secondly*, the Supreme Court decided that the contention "that the indenture is void as being 'against public policy,' does not involve a constitutional question within the meaning of the" appeal provisions of the Judicial Code. 271 U. S. 323, 330. *Thirdly*, the Supreme Court held that Secs. 1977, 1978 and 1979, Rev. Stats. did not prohibit or invalidate contracts entered into between private persons concerning their property, saying: "There is no color for the contention that they rendered the indenture void. . . . We therefore conclude that neither the constitutional nor statutory questions relied on as grounds for the appeal to this Court have any substantial quality or color of merit, or afford any jurisdictional basis for the appeal." 271 U. S. 323, 331. This Court, therefore, dismissed the appeal for want of jurisdiction and without implying that the judgment appealed from was right. In fact, since this Court had no jurisdiction, it

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Curtis, and others of property, without due process of law; abridges the privilege and immunities of citizens of the United States, including the defendant, Helen Curtis, and other persons within this jurisdiction [and denies them] the equal protection of the law, and therefore, is forbidden by the Constitution of the United States, and especially by the Fifth, Thirteenth, and Fourteenth Amendments thereof, and the Laws enacted in aid and under the sanction of the said Thirteenth and Fourteenth Amendments' . . . namely, sections 1977, 1978, 1979 of the Revised Statutes."

cannot be said to have given final consideration to any question not involved in reaching that conclusion. It is plain, therefore, that this Court decided only (a) that the creation by private parties of racial restrictive covenants does not violate the Constitution or Secs. 1977, 1978 and 1979, Rev. Stats. and (b) that the contention that a contract was against public policy was not an adequate basis for an appeal under the Judicial Code.

No contention that either the Constitution or Sec. 1978, Revised Statutes, prohibited *judicial enforcement by injunction* of such covenants was raised by any pleading in any court, nor was it in fact even considered by either the District Court or the Court of Appeals. Nevertheless, the appellants undertook, by brief and argument, to raise that question in this Court. This Court said (271 U. S. 323, 331-332):

“And, while it was further urged in this Court that the *decrees of the courts below in themselves* deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the Code provision, *it was not raised by the petition for the appeal or by any assignment of error, either in the Court of Appeals or in this Court*; and it likewise is lacking in substance. The defendants were given a full hearing in both courts; they were not denied any constitutional or statutory right; and there is no semblance of ground for any contention that the decrees were so plainly arbitrary and contrary to law as to be acts of mere spoliation. See *Delmar Jockey Club v. Missouri*, *supra*, [210 U. S. 324] 335. Mere error of a court, if any there be, in a judgment entered after a full hearing, does not constitute a denial of due process of law. *Central Land Co. v.*

*Laidley*, 159 U. S. 103, 112; *Jones v. Buffalo Creek Coal Co.*, 245 U. S. 328, 329.

"It results that, in the absence of any substantial constitutional or statutory question giving us jurisdiction of this appeal under the provisions of § 250 of the Judicial Code, *we cannot determine upon the merits the contentions earnestly pressed by the defendants in this court that the indenture is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant.* These are questions involving a consideration of rules not expressed in any constitutional or statutory provisions, but claimed to be a part of the common or general law in force in the District of Columbia; and, plainly, they may not be reviewed under this appeal unless jurisdiction of the case is otherwise acquired.

"Hence, *without a consideration of these questions, the appeal must be, and is Dismissed for want of jurisdiction.*" (Emphasis supplied.)

The Court thus expressly left open the questions that the covenant is void because contrary to public policy, and that it is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the covenant.

Furthermore, the statement in *Corrigan v. Buckley*—"and it likewise is lacking in substance"—to the contention thus raised for the first time (that the decrees themselves were unconstitutional) was plainly mere *dictum*, since this Court had ruled that there was no jurisdiction to consider the merits of the case and since that question was not in any event properly in that case. Furthermore, it is quite clear, from the references to "a full hearing" in the Court's comment on the question, that the Court had in mind solely issues of procedural due process, and did not adequately consider the requirements of substantive due process with

respect to a case properly raising the question of the constitutionality of judicial enforcement of a racial restrictive covenant. *Corrigan v. Buckley* therefore does not constitute a prior adjudication of the issues now presented to this Court. In fact, if anything, the Court's precise distinction between a contention that the "covenant is void" and a contention that "the decrees of the courts below in themselves" violated the due process clause indicates that the Court recognized that holding that the Constitution and the Revised Statutes did not make the covenant "void" for the purpose of conferring jurisdiction of an appeal, still left open the further issue of the constitutionality of the decrees enforcing the covenant, albeit the decision shows no evidence of having viewed the latter issue as involving substantive as well as procedural due process. The Court's *dictum*, however, was entirely and plainly irrelevant to the decision; it was pronounced without any consideration of the severe and widespread harms resulting from the enforcement of such covenants; and for the reasons here presented it was in any event a mistaken view if construed as sanctioning the judicial enforcement of a racial restrictive covenant. Furthermore, the consequences of such judicial enforcement of restrictive covenants have become much more serious and acute since the Court uttered its *dictum*. They now endanger the health, morals and welfare of a large portion of our population and imperil our national unity. These evil effects have been further intensified by the increased urbanization of Negroes and the widespread imposition of racial restrictive covenants. See Part I B of this brief. Therefore upon this full examination of the merits of the question, now for the first time properly presented to this Court, we urge this Court to declare that *dictum* bereft of any vitality.

The principal question here presented (that the *judicial enforcement* of a racial restrictive covenant is unconstitu-

tional) has, in fact, rarely been raised or decided even in the State and lower Federal courts. *Gandolfo v. Hartman*, 49 Fed. 181 (1892), the earliest reported case involving such a covenant, held that its judicial enforcement would be unconstitutional.

The next reported decision involving a restrictive covenant (*Queensborough Land Co. v. Cazeaux*, 136 La. 724, 67 So. 641), was in 1915. That decision, and almost all subsequent decisions by State and lower Federal courts involving restrictive covenants, did not pass on the question whether the *judicial enforcement* of racial restrictive covenants was compatible with the Constitution. The language of the opinions indicates that counsel generally failed to spell out the constitutional issues, in terms of governmental action through judicial enforcement, and contented themselves, instead, with the argument that the covenants themselves (the creation of the covenants alone) violated constitutional guarantees.<sup>157</sup> So put, their arguments did not adequately raise the issue of the constitutionality of *government action through judicial enforcement* of the covenant but rather was directed against the action of the covenantors as individuals. Hence the State and lower Federal court decisions have generally brushed aside such arguments with the simple statement, as in the *Queensborough Land Co.* case, that "The Fourteenth Amendment, in so far as prohibiting discrimination against the negro race, applies only to state legislation, not to the contracts of individuals." 136 La. 724, 728, 67 So. 641, 643.

<sup>157</sup> Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 U. of Chi. L. Rev. 198, 199-200 (Feb. 1945).

The issue of the constitutionality of *judicial enforcement* of racial restrictive covenants appears to have been raised and decided only in the following cases:

**a. *Judicial enforcement held unconstitutional:***

(1) *Gandolfo v. Hartman*, 49 Fed. 181.

(2) *Anderson v. Ausetz*, L.A. No. 19,759 ("Sugar Hill" case), in Superior Court of California in Los Angeles, December, 1945, decision by Judge Clark, reported in *Architectural Forum*, Jan. 1946 ("Good Neighbors").

(3) *Wright v. Drye*, in Superior Court of California in Los Angeles, October, 1947, decision by Judge Mosk, reported in *Chicago Defender*, pp. 1, 6 (Nov. 1, 1947).

**b. *Judicial enforcement held not unconstitutional:***

(1) *Title Guarantee & Trust Co. v. Garrott*, 42 Calif. App. 152, 154, 183 Pac. 470, 471 (1919).

(2) *Kraemer v. Shelley*, — Mo. —, 198 S. W. (2d) 679, 683 (1946) (now before this Court, No. 72, Oct. Term, 1947).

(3) *Sipes v. McGhee*, 316 Mich. 614, 25 N. W. (2d) 638, 644 (1947) (now before this Court, No. 87, Oct. Term, 1947).

**c. *Contention urged, but ignored by court, that judicial enforcement is unconstitutional.***

The respondents' brief in opposition to the petitions for certiorari in the cases at bar states that the contention against the constitutionality of judicial enforcement of racial restrictive covenants was raised in the following cases and "Although urged strongly in each case, the point was ignored by the Court" (Respondent's brief in opposition, p. 7):

(1) *Corrigan v. Buckley*, 271 U. S. 323 (1926) (issue not properly raised; case dismissed for want of jurisdiction; discussed and fully analyzed above in this brief).

(2) *Hundley v. Gorewitz*, 7 App. D. C. 48, 132 F. (2d) 23 (1942) (enforcement of covenant refused on ground of change of neighborhood).

(3) *Mays v. Burgess*, 79 App. D. C. 343, 147 F. (2d) 869 (1945) (urged in appellant's brief; ignored by court which, in fact, stated that appellant urged that "the covenant . . . violates the constitution," 147 F. (2d) at 870).

It is plain that these few decisions do not constitute an "overwhelming" number of State or lower Federal court decisions against the contention that *judicial enforcement* of racial restrictive covenants is unconstitutional.

## II

**JUDICIAL ENFORCEMENT OF A RESTRICTIVE COVENANT WHICH, SOLELY ON THE BASIS OF RACE, FORBIDS A CITIZEN FROM PURCHASING AND OCCUPYING LAND FOR RESIDENTIAL PURPOSES, VIOLATES SECTION 1978, REVISED STATUTES (8 U. S. C. SEC. 42).**

Section 1978, Revised Statutes, 8 U. S. C. Sec. 42, provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

This statute, applicable to the District of Columbia over which Congress has at least the power of a State legislature,<sup>158</sup> applies to all citizens and to all property in the District and requires the courts of the District to recognize and protect those rights. The very essence of the statute is that it renders entirely immaterial the question whether a citizen is "white" as a basis for determining who has and who has not the rights to purchase, hold and sell prop-

<sup>158</sup> Cf. *Talbot v. Silver Bow County*, 139 U. S. 438, 444; *Geafroy v. Riggs*, 133 U. S. 258.

erty, and thus forbids the courts of the District from looking to the color or "white"-ness of a citizen as a basis for denying those rights to any citizen.

The Petitioners are citizens of the United States (R. 380; 169, 215, 226, 238, 307). White citizens admittedly have the right to purchase the property here involved from willing sellers and to hold it. The injunction which the District Court issued denies that right to the grantee petitioners *solely on the basis that they are not "white."* The District Court, an arm of the Government, has therefore denied to them "the same right . . . as is enjoyed by white citizens," to purchase and hold any parcel of the large amount of land in the District which is covered by covenants similar to the covenant here involved. The injunction also denies to petitioner Urciolo and to other owners of covenanted land the right to convey their property to any buyer, irrespective of his race or color, although white citizens owning other real property in the District may exercise such right to convey their property to any buyer.

This Court held in *Buchanan v. Warley*, 245 U. S. 60, that enforcement of a municipal ordinance directed toward the same end and operating on the same basis as this covenant would violate this statute.<sup>150</sup> The enforcement of

<sup>150</sup> This Court stated, in *Buchanan v. Warley*: "The Statute of 1866, originally passed under sanction of the Thirteenth Amendment, 14 Stat. 27, and practically reenacted after the adoption of the Fourteenth Amendment, 16 Stat. 144, [Section 1978, Revised Statutes, 8 U. S. C. 42] expressly provided that all citizens of the United States in any State shall have the same right to purchase property as is enjoyed by white citizens. Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color. *Hall v. DeCuir*, 95 U. S. 485, 508. These enactments did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color. *Civil Rights Cases*, 109 U. S. 3, 22. The Fourteenth Amendment and these statutes enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color." (245 U. S. 60, 78-79.)

this covenant by the judicial arm of the Government violates the statute just as plainly, since, solely on the basis that a person is not "white," the court thus denies to some citizens "the same right . . . as is enjoyed by white citizens" to purchase, hold and sell real property, although the statute confers that right on "all citizens."

### III

#### **JUDICIAL ENFORCEMENT OF A RESTRICTIVE COVENANT WHICH, SOLELY ON THE BASIS OF RACE FORBIDS A PERSON FROM PURCHASING AND OCCUPYING LAND VIOLATES A TREATY OF THE UNITED STATES, NAMELY, THE CHARTER OF THE UNITED NATIONS.**

The Charter is a treaty of the United States ratified by the Senate (59 Stat. 1031), under the Treaty power of the Constitution (Article VI) which provides that "all treaties made . . . under the authority of the United States, shall be the supreme law of the land." The Charter provides that "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race" and that "all Members pledge themselves to take joint and separate action" for that purpose. Articles 55 (c), 56 (59 Stat. 1031, 1045-1046).

Even if the United States Government must affirmatively implement the Charter in order to outlaw private discriminations by individuals against other persons on account of their race, the solemn pledge by the United States Government that it will "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race" plainly and directly requires the *Government* to refrain from impairing "human rights and fundamental freedoms" on racial distinctions.

This necessarily means that the *Government* (whether acting through its legislative, judicial, or executive arm) may not impose, or lend its aid to, discriminations depriving any person of his human rights and fundamental freedoms because of his race. There is a sharp distinction between racial discrimination which is *purely private*, and racial discrimination which is directly caused or aided by the *Government* through any of its agencies.

One of the most fundamental of human rights and freedoms is the right and freedom to acquire a home and to live in it.<sup>160</sup> When the judicial arm of the Government of the United States, purporting to exercise discretionary power, enforces a restrictive covenant which, solely on the basis of race, forbids a person to purchase and occupy land for residential purposes, such action clearly violates the Government's obligation under the Charter not to lend its aid to such racial discriminations.<sup>161</sup> The supremacy of this Treaty precludes the specific enforcement in any court

<sup>160</sup> The human rights provision of the United Nations Charter includes the right to acquire adequate housing. See January 1946 issue of 243 *Annals of the American Academy of Political and Social Science* on "Essential Human Rights," particularly Edward R. Stettinius, Jr., "Human Rights in the United Nations Charter," p. 1; Charles E. Merriam, "The Content of an International Bill of Rights," p. 11; American Law Institute, "Statement of Essential Human Rights," p. 18, 24. The Institute's formulation of the right to adequate housing is as follows: "Article 14. Food and Housing. Everyone has the right to adequate food and housing. The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity to obtain these essentials." The committee appointed by the American Law Institute to formulate the Statement of Essential Human Rights contained United States, Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian, and Spanish representatives (p. 18). A detailed comment on the human right to adequate housing is set forth in C. Wilfred Jenks, "The Five Economic and Social Rights," 243 *Annals*, etc., *supra*, pp. 40, 43-45.

<sup>161</sup> The Preamble of the Charter proclaims the determination of the Peoples of the United Nations "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity

of the United States of a covenant whose objective is contrary to the objectives of the Treaty. *Kennett v. Chambers*, 55 U. S. (14 How.) 38. In that case, General Chambers of the revolutionary army which sought to sever Texas from Mexico, in order to secure funds for the Texas revolutionists against Mexico, had made a contract in Ohio, with citizens of the United States for the sale of his land in Texas, although at that time there were subsisting between the United States and Mexico a treaty of limits under which Texas was recognized as a part of Mexican territory, and a treaty of amity. A suit was later brought for specific enforcement of the contract to convey the land. This Court denied specific enforcement of the contract, holding that it was void because its objectives were inconsistent with the treaties. In *United States v. Pink*, 315 U. S. 203, 231-233, this Court held the courts of New York lacked power to deny enforcement of a claim where such refusal was inconsistent with the national policy as expressed in a Presidential Agreement with the Government of Russia. Thus, the courts lack power either to enforce a claim (as in *Kennett v. Chambers*), or to deny enforcement to a claim (as in *United States v. Pink*), where such enforcement or denial of enforcement would be inconsistent with the policy and objectives of a treaty of the United States. Further examples of this principle are *Gandolfo v. Hartman*, 49 Fed. 181, in which specific enforcement of a restrictive covenant against occupancy of residential land by Chinese was re-

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and worth of the human person, in the equal rights of men and women . . . and for these ends to practice tolerance and live together in peace with one another as good neighbors . . ." The human rights provisions designed to achieve these ends are essential to the success of the United Nations and the prevention of future wars. Henri Bonnet, "Human Rights are Basic to Success of United Nations," 243 *Annals of the American Academy of Political and Social Science*, p. 6 (Jan. 1946). As such, they "properly pertain to our foreign relations" and the treaty provisions concerning them therefore override any conflicting laws or policies. *Santovincenzo v. Egan*, 284 U. S. 30, 40.

fused because the objectives of the covenant were contrary to a subsisting treaty between the United States and China; and the case of *In re Drummond Wren* (1945), 4 Dom. L. R. 674, Ont. Rep. (1945) 778, Ont. Wkly. Notes (1945) 795, in which the Supreme Court of Ontario held that it would not enforce a covenant against the occupancy of residential lands by Jews because the objectives of the covenant are contrary to the objectives of the United Nations Charter to which Canada is a signatory. Even if there were any possible doubt, which there is not, as to the precise limits of the area intended to be covered by the human rights provisions of the Charter, it must, since it is a treaty of the United States, "be liberally construed so as to affect the apparent intention of the parties" to the treaty. *Nielsen v. Johnson*, 279 U. S. 47, 51.

#### IV

**RACIAL RESTRICTIVE COVENANTS AND THEIR ENFORCEMENT BY THE COURTS ARE SO PLAINLY CONTRARY TO THE PUBLIC POLICY OF THE UNITED STATES THAT THE JUDGMENTS OF THE COURT BELOW SHOULD BE REVERSED BY THIS COURT.**

Racial restrictive covenants, and their enforcement by the courts, are contrary to the traditional and official public policy of the United States against discrimination based on race or religion, expressed in the Declaration of Independence, the Constitution, statutes, treaties, decisions of this Court, and pronouncements of the President of the United States.<sup>162</sup> Moreover, the effect of restrictive cove-

<sup>162</sup> The incompatibility between the enforcement of these racial restrictive covenants and the national public policy of the Federal Government is pithily illustrated in a recent comment by Mr. Winthrop W. Aldrich, Chairman of the Board of Trustees of the American Heritage Foundation. This Foundation is sponsoring the year-long tour of the *Freedom Train* carrying to some 300 cities the Declaration of Independence, the Constitu-

nants is detrimental to the health, safety and morals of the community and hence contrary to public policy even without regard to such official expressions.

(A) *Declaration of Independence.* The most quoted sentence in the Declaration is: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness."

(B) *Constitution.* The Constitution, in several provisions,<sup>163</sup> embodies the national policy against discrimination on racial grounds. Furthermore, this Court's decision in *Buchanan v. Warley*, 245 U. S. 60, that the Constitution forbids legislation restricting the sale and occupancy of land solely on the basis of race, obviously indicates that the Constitution embodies a national policy against racial restrictive covenants and against their enforcement by a court to achieve the very same end forbidden to the legislature.

(C) *Statutes.* The national public policy against racial discrimination has been reflected in numerous acts of Congress, including statutes explicitly directed against the restrictions here involved. Section 1978, Revised Statutes, 8 U. S. C. Sec. 42 (which restates a portion of the act of April 9, 1866, 14 Stat. 27, Chap. 31) provides: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." See *Buchanan v. Warley*, 245 U. S. 60,

tion, and other documentary milestones in our history of freedom. Commenting on the Foundation's ruling that "no segregation of any individuals or groups of any kind on the basis of race or religion be allowed at any exhibition of the Freedom Train held anywhere," Mr. Aldrich said: "... any other course was unthinkable." See *The Evening Star*, Washington, D. C., p. A-4, September 29, 1947.

<sup>163</sup> U. S. Constitution, Amendments 5, 13, 14 (Sec. 1) and 15 (Sec. 1).

78-79. This national public policy has been reiterated in Federal legislation designed to eliminate racial or religious discrimination with regard to making and enforcing contracts;<sup>164</sup> the right to sue, be parties and give evidence;<sup>165</sup> security of person and property;<sup>166</sup> penalties, taxes and licenses;<sup>167</sup> administration of the homestead laws;<sup>168</sup> the elective franchise;<sup>169</sup> civilian pilot and nurses training;<sup>170</sup>

<sup>164</sup> Act of April 9, 1866 (14 Stat. 27, Chap. 31) from which Sections 1977 and 1978, Revised Statutes (8 U.S.C., Secs. 41 and 42), were derived. Section 1977, Rev. Stat., provides: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." The Act of May 31, 1870 (16 Stat. 140, Chap. 114, Sec. 16), reenacted, after the adoption of the Fourteenth Amendment in 1868, that part of the Act of April 9, 1866, which was subsequently embodied in Section 1977, Rev. Stat.

<sup>165</sup> See footnote 164, *supra*; also Act of July 2, 1864 (13 Stat. 351, Chap. 210, s. 3, Rev. Stat. s. 858) which provided "that in the Courts of the United States there shall be no exclusion of any witness on account of color . . ."; the Act of March 2, 1867 (14 Stat. 457, Chap. 166, s. 2) extended this provision to the Court of Claims and is now embodied in Sec. 1078, Revised Statutes (28 U.S.C. Sec. 292).

<sup>166</sup> Note 164, *supra*.

<sup>167</sup> Note 164, *supra*.

<sup>168</sup> Act of June 21, 1866 (14 Stat. 66, 67, Chap. 127) provided that in administering the homestead laws, "no distinction or discrimination shall be made . . . on account of race or color." It is now embodied in Sec. 2302, Rev. Stat., 43 U.S.C. 184.

<sup>169</sup> Act of May 31, 1870 (16 Stat. 140, Chap. 114, Sec. 1), subsequently reenacted as Sec. 2004, Revised Statutes (8 U.S.C. 31), guaranteed the right to vote at all elections "without distinction of race, color, or previous condition of servitude"; Act of Jan. 25, 1867 (14 Stat. 379), reenacted as Sec. 1860, Revised Statutes (48 U.S.C. Sec. 1460), forbade "denial of the elective franchise in any of the Territories of the United States . . . on account of race, color, or previous condition of servitude."

<sup>170</sup> Act of June 27, 1939 (53 Stat. 855, 856, 49 U.S.C. sec. 752) provided that in the civilian pilot training program "none of the benefits of training or programs shall be denied on account of race, creed, or color;" Act of June 15, 1943 (57 Stat. 153, 50 U.S.C. App., sec. 1451) provided that in the nurses training program "there shall be no discrimination in the administration of . . . this Act on account of race, creed, or color."

jury service;<sup>171</sup> federal employment;<sup>172</sup> private employment during World War II;<sup>173</sup> work relief<sup>174</sup> and public works.<sup>175</sup>

Moreover, Section 20 of the Criminal Code (Act of March 4, 1909, 35 Stat. 1088, 1092), 18 U. S. C. Sec. 52, Revised Statutes, Sec. 5510, makes it a crime for anyone, "under color of any law, statute, ordinance, regulation, or custom, wilfully" to deprive anyone of his "rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or [to subject him] to different punishments, pains, or penalties . . . by reason of his

<sup>171</sup> Act of March 1, 1875 (18 Stat. 336, Sec. 4, 8 U.S.C., sec. 44) forbidding discrimination as to qualification for jury service, reenacted in Sec. 2 of Act of June 30, 1879 (21 Stat. 43, 44).

<sup>172</sup> Act of Feb. 28, 1919 (40 Stat. 1189, 1201, Chap. 69) prohibited discrimination, except for veteran's preference, in the expenditure of funds for roads; Act of Nov. 26, 1940 (54 Stat. 1211, 1214, Chap. 919, Sec. 3e, 5 U.S.C. 681e) (Ramspeck Act) prohibited discrimination in the classified civil service on account of race, creed or color; Foreign Service Act of Aug. 13, 1946 (60 Stat. 999, 1030; 22 U.S.C. sec. 807) prohibited "discrimination against any person on account of race, creed or color" in carrying out the Foreign Service Act.

<sup>173</sup> Appropriations for Committee on Fair Employment Practices: see Act of June 28, 1944 (58 Stat. 533, 536); Act of December 22, 1944 (58 Stat. 853, 874); and Act of July 17, 1945 (59 Stat. 473).

<sup>174</sup> Act of March 31, 1933 (48 Stat. 22, 23) (public works unemployment relief): ". . . in employing citizens for the purposes of this Act, no discrimination shall be made on account of race, color, or creed"; Act of June 28, 1937 (50 Stat. 319, 320, 16 U. S. C. 584g): "No person shall be excluded [from Civilian Conservation Corps] on account of race, color, or creed." Criminal sanctions were imposed upon those depriving anyone of work relief benefits "on account of race, creed, color" under the Act of Aug. 2, 1939 (53 Stat. 1147, 1148, 18 U. S. C. sec. 61e) or depriving anyone of emergency relief benefits "on account of race, religion, or political affiliations" under the act of June 29, 1937 (50 Stat. 352, 357). Similar prohibitions were contained in the Emergency Relief Appropriation Acts of June 21, 1938 (52 Stat. 809, 815); June 30, 1939 (53 Stat. 927, 937); June 26, 1940 (54 Stat. 611, 623); July 1, 1941 (55 Stat. 396, 405, 406); and July 2, 1942 (56 Stat. 634, 643); and in the National Youth Administration Appropriation Acts of June 26, 1940 (54 Stat. 574, 593); July 1, 1941 (55 Stat. 466, 491); and July 2, 1942 (56 Stat. 562, 575).

<sup>175</sup> Act of June 28, 1941 (55 Stat. 361, 363, 42 U. S. C. 1533) provided that in determining need for public works, "no discrimination shall be made on account of race, creed, or color."

color, or race, than are prescribed for the punishment of citizens." Section 19 of the Criminal Code, 18 U. S. C. Sec. 51, Revised Statutes, Sec. 5508 (providing criminal penalties where "two or more persons conspire to injure, oppress . . . any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . ."), has been held to apply to agreements between persons to keep Negroes from the right to lease and cultivate lands, *United States v. Morris*, 125 Fed. 322; see also *United States v. Waddell*, 112 U. S. 76; *Ex parte Yarbrough*, 110 U. S. 651. Other sections of the Criminal Code punish "offenses against the elective franchise and civil rights of citizens."<sup>176</sup>

(D) *Treaties and International Agreements.* This national policy against racial discrimination is further expressed in the treaties and international agreements of the United States. (a) By adherence to the Charter of the United Nations,<sup>177</sup> the United States pledged itself to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race." (b) The Potsdam Agreement<sup>178</sup> specifically provided that "All Nazi laws which . . . established dis-

<sup>176</sup> Criminal Code, Secs. 21 to 26, being, respectively, reenactments of Secs. 5518 and 5528 through 5532, Revised Statutes (18 U. S. C. Secs. 54 through 59).

<sup>177</sup> Ratified by the Senate, 59 Stat. 1031, 1045-46. On Nov. 19, 1946, the General Assembly of the United Nations adopted a Resolution that "it is in the higher interests of Humanity to put an immediate end to religious and so-called racial persecutions and discrimination, and calls on the Governments and responsible authorities to conform both to the letter and to the spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to that end." Resolution of General Assembly, 48th plenary meeting, 19 Nov. 1946 (Journal of the United Nations, No. 75, Supple. A-64, Add. 1, page 957).

<sup>178</sup> White House News Release, Aug. 2, 1945, Part III, A. 4, reprinted in *Voices of History, 1945-46*, p. 394, 397 (Nathan Ausubel, ed., Gramercy Publishing Co., N. Y. 1946).

crimination on grounds of race, creed, or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated." (c) In the treaties of February 10, 1947, with the satellite Axis nations, of Italy, Rumania, Bulgaria, and Hungary, this country was particularly careful to incorporate guarantees of nondiscrimination against racial minorities.<sup>179</sup> (d) When the Act of Chapultepec was adopted by the United States and the Latin American Nations at the International Conference on Problems of War and Peace, at Mexico City, Mexico, these nations unanimously adopted Resolution No. 41 on March 7, 1945, reaffirming the principle "of equality of rights and opportunities for all men, regardless of race or religion" and that their governments shall "prevent in their respective countries all acts which may provoke discrimination among individuals because of race or religion."<sup>180</sup> (e) The Atlantic Charter deals with the rights of "all peoples" and "all men."<sup>181</sup>

The Supreme Court of Ontario has held, in reliance on the United Nations Charter as indicating the public policy of Canada which had subscribed to the Charter, that restrictive covenants prohibiting the alienation of land to "Jews or persons of undesirable nationality" are invalid. *In re Drummond Wren* [1945], 4 Dom. L. Rep. 674.

<sup>179</sup> *Making the Peace Treaties, 1941-1947* (Dept. of State publication 2774, European Ser. 24), pp. 6-9, 32 (1947); 16 Dept. of State Bull. 1077, 1080, 1081, 1082 (June 1, 1947); 93 Cong. Rec. 6307, 6567, 6573, 6578. These treaties were ratified by the Senate on June 5, 1947. 93 Cong. Rec. 6567, 6573, 6578, 6584.

<sup>180</sup> Report of the Delegation of the United States of America to the Inter-American Conference on Problems of War and Peace, Mexico City, Mexico, Feb. 21-March 8, 1945 (Dept. of State Publ. 2497, Conference Series 85) p. 109; *The New York Times*, p. 9, March 7, 1945.

<sup>181</sup> President Roosevelt's Message of August 21, 1941, conveying Statement by the Prime Minister of England and the President of the United States, H. Doc. 358, 77th Cong., 1st session.

(E) *Decisions of this Court*: The opinions of this Court, particularly in recent years, have eloquently expressed the national policy against racial discrimination. Illustrative are the following decisions: *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 203: ". . . discriminations based on race alone are obviously irrelevant and invidious." Justice Murphy concurring (at p. 208): "The Constitution voices its disapproval whenever economic discrimination is applied under authority of law against any race, creed or color. A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn it whenever it appears in the course of a statutory interpretation." *Korematsu v. United States*, 323 U. S. 214, 216: ". . . to begin with . . . all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. . . . Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can." *Hirabayashi v. United States*, 320 U. S. 81, 100: "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Smith v. Texas*, 311 U. S. 128, 130: "For racial discrimination . . . in . . . jury service . . . is at war with our basic concepts of a democratic society and a representative government." *Yick Wo v. Hopkins*, 118 U. S. 356, 374: ". . . hostility to the race . . . to which the petitioners belong . . . in the eye of the law is not justified. The discrimination is, therefore, illegal. . . ." *Edwards v. California*, 314 U. S. 160, 185 (Justice Jackson concurring): Race, creed or color is a "neutral fact—constitutionally an irrelevance."

(F) *The President*: Ever since President Washington characterized the newly formed government of the United States as one that "gives to bigotry no sanction, to persecution no assistance,"<sup>182</sup> our Chief Executives have often given expression to the public policy which he so clearly enunciated. Equally clearly have our Presidents applied that tradition to the right to a decent home. Thus, in his Message to Congress on January 11, 1944, President Roosevelt said:<sup>183</sup>

" . . . . We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race, or creed.

"Among these are— . . . The right of every family to a decent home; . . . ."

President Truman enunciated this principle even more explicitly on June 29, 1947, as follows:<sup>184</sup>

"There is no justifiable reason for discrimination because of ancestry, or religion, or race, or color. We must not tolerate such limitations on the freedom of any of our people and on their enjoyment of the basic rights which every citizen in a truly democratic society must possess. Every man should have the right to a decent home . . . . We must insure that these rights—on equal terms—are enjoyed by every citizen."

Presidential Executive orders have reinforced the na-

<sup>182</sup> George Washington's Letter of August 1790 to the Hebrew Congregation in Newport, Rhode Island, 30 Washington's Letter Books 19.

<sup>183</sup> House Doc. No. 377, 78th Cong., 2nd Sess., p. 7, reprinted in *Voices of History, 1944-45*, p. 21, 26 (Nathan Ausubel, ed., Gramercy Publ. Co., N. Y., 1945).

<sup>184</sup> Address of President Truman, 38th Annual Conference of the National Association for the Advancement of Colored People, 93 Cong. Rec. A-3505 (July 2, 1947); *The Washington Post*, p. 4 (June 30, 1947).

tional policy against racial or religious discrimination in public employment and, during the war, in war industries.<sup>185</sup>

On December 5, 1946, President Truman created the President's Committee on Civil Rights to investigate and make recommendations "with respect to the adoption or establishment, by legislation or otherwise, of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."<sup>186</sup> The Committee's Report ("To Secure These Rights"), which, among other recommendations against racial discrimination, urged court attack on, and outlawing of, restrictive covenants, was presented to President Truman on October 29, 1947, who referred to it as "an American charter of human freedom in our time." *The New York Times*, p. C-14 (Oct. 30, 1947). And on November 10, 1947, the Attorney General, filing a motion in this Court for leave to argue in the cases at bar, stated: "The Government is of the view that judicial enforcement of racial restrictive

<sup>185</sup> Executive Order No. 2000, July 28, 1914 (in making reductions in Government service, no discrimination shall be exercised for political or religious reasons); Executive Order No. 7915, June 24, 1938 (3 F.R. 1519) (prohibiting discrimination in executive civil service for political or religious reasons); Executive Order No. 8587, November 7, 1940 (5 F.R. 4445), prohibiting discrimination in executive civil service because of race or political or religious reasons; Executive Order No. 8802, June 25, 1941 (6 F.R. 3109) (as amended by Executive Orders No. 8823, July 18, 1941 (6 F.R. 3577); No. 9346, May 27, 1943 (8 F.R. 7183); and No. 9664, December 18, 1945, (10 F.R. 15301) (reaffirming policy of full participation in defense program by all persons, regardless of race, creed, color, or national origin; prohibiting any discrimination in employment in war industries or in Government by reason of race, creed, color or national origin; establishing a Committee on Fair Employment Practices); Letter of November 5, 1943, from the President to the Attorney General (8 F.R. 15419) (interpreting to be mandatory rather than directive, the requirement of Executive Order No. 9346, *supra*, that there be inserted in all Government contracts a provision obligating the contractor not to discriminate against any employee or applicant for employment on account of race, creed, color, or national origin, and requiring the contractor to include similar contractual provisions in all sub-contracts).

<sup>186</sup> Executive Order No. 9808, Dec. 5, 1946 (11 F.R. 14153).

covenants is contrary to the Fifth and Fourteenth Amendments of the Constitution, is in violation of specific provisions of the Civil Rights Act, and is contrary to the public policy of the United States." *The Washington Post*, pp. 1, 8 (Nov. 11, 1947).

(G) *Effect of Covenants*. Finally, aside from the express formulation of public policy set forth by the Declaration of Independence, by the Constitution, by statutes, by treaties, by decisions of this Court, and by the President of the United States, the drastic effects of restrictive covenants in accentuating the housing shortage for Negroes and confining them to wretched quarters in overcrowded ghettos, with consequent jeopardy to the health, safety and morals of the community, indicate that such covenants, and their specific enforcement by the judicial arm of the Government, are contrary to the public policy of this country.<sup>187</sup>

The question whether restrictive covenants are void because contrary to public policy, was specifically left open in *Corrigan v. Buckley*, 271 U. S. 323, 332.

The law reports are replete with instances in which courts have refused, on grounds of public policy, to exert their powers against defendants even where a contract between the parties (which is not in any sense present here) was the alleged basis for seeking a judicial decree against one of the parties, and where the effect of such decree would be far less drastic than would result from enforcing a racial restrictive covenant.<sup>188</sup> In the light of these considerations of public policy, the judicial enforcement of racial restrictive covenants should not be countenanced by this Court.

<sup>187</sup> *Gandolfo v. Hartman*, 49 Fed. 181; *In re Drummond Wren* (1945) 4 D. L. R. 674 (Ontario Supreme Court).

<sup>188</sup> *Kennett v. Chambers*, 55 U. S. (14 How.) 38; *Hyer v. Richmond Traction Co.*, 168 U.S. 471 (1897); *Beasley v. Texas & Pacific Railway Co.*, 191 U.S. 492 (1903); *McMullen v. Hoffman*, 174 U.S. 639 (1899);

## V

**BECAUSE OF THE DISCRIMINATORY CHARACTER AND INEQUITY OF THE RESTRICTIONS ON THE SALE, PURCHASE AND OCCUPANCY OF LAND SOLELY ON THE BASIS OF RACE, NO COURT OF EQUITY SHOULD LEND ITS AID TO THE ENFORCEMENT OF SUCH RESTRICTIONS BY ISSUANCE OF INJUNCTION.**

Equitable relief is not a matter of right, but is addressed to the sound discretion of the court, and always with reference to the facts of the particular case.<sup>189</sup>

Courts of equity have traditionally asserted and exercised their powers to refuse equitable or injunctive relief if the granting of such relief would be against the best interests of the general public.<sup>190</sup> In addition, courts of equity

*Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373 (1911); *Texas & Pac. Ry. Co. v. Marshall*, 136 U.S. 393 (1890); Gelhorn, "Contracts and Public Policy," 35 Colum. L. Rev. 678, 691, 692; Williston on Contracts, secs. 1652, 1652A, 1653 (Rev. ed., 1937); American Law Institute, *Restatement of the Law of Contracts*, vol. 2, secs. 512, 591 (1932). In *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 282 (1827), Justice Johnson, concurring, said: "... The Constitution was framed for society, and an advanced state of society, in which I will undertake to say that all the contracts of men receive a relative, and not a positive interpretation: for the rights of all must be held and enjoyed in subserviency to the good of the whole. The State construes them, the State applies them, the State controls them, and the State decides how far the social exercise of the rights they give us over each other can be justly asserted."

<sup>189</sup> *Pope Mfg. Co. v. Germully*, 144 U.S. 224, 237 (1892); *Hennessey v. Woolworth*, 128 U.S. 438, 442 (1888); *Jamison Coal and Coke Co. v. Goltra*, 143 Fed. 2d 889, 894, cert. denied 323 U.S. 769 (1944).

<sup>190</sup> In *Beasley v. Texas & Pacific R. Co.*, 191 U.S. 492, the plaintiff had conveyed land to a railroad on its agreement to build a depot thereon and its covenant not to build another depot within 3 miles. The plaintiff sought to enjoin the railroad's assignee from building another depot within 3 miles. In denying injunctive relief, this Court said (pp. 496-497): "Whatever the form which the attempt to restrict may take, obviously it is not desirable to allow large tracts of land to be tied up and cut off from the ordinary incidents of ownership, according to the invention of the owner, in perpetuity, in favor of other large tracts which may come by

have similarly refused to grant equitable or injunctive relief if, on a "balancing of the equities" of the parties, the hardship thereby inflicted on the respondent would greatly outweigh the benefits to the person who is attempting to invoke the equity powers of the court.<sup>191</sup> Where either or both of these circumstances are present, courts of equity have refused to lend their aid on the basis of broader considerations of public policy than the claimed right of the plaintiff to secure enforcement of his "rights" by a court of equity, and have left him to assert his damages, if any, in a court of law.

These doctrines of equity are plainly applicable to this case because the extreme hardship, which the injunctive

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division into many hands. . . . Assuming that a contract like the present is valid as a contract, and making the more debatable assumption that the burden of the contract passed to a purchaser with notice, it does not follow that such a contract will be specifically enforced. Illegality apart, a man may make himself answerable in damages for the happening or not happening of what event he likes. But he cannot secure to his contractor the help of the court to bring that event to pass, unless it is in accordance with policy to grant that help. To compel the specific performance of contracts still is the exception, not the rule, and courts would be slow to compel it in cases where it appears that paramount interests will or even may be interfered with by their action." See also *Norcross v. James*, 140 Mass. 188, 191-3, 2 N.E. 946, 948-9 (1885). In *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U. S. 488 (1942), an injunction against a patent infringer was denied where the patentee was using its patent contrary to the public interest, even though there was no showing that the patentee was violating a statute or that the alleged infringer was harmed by the misuse of the patent. See also *Pope Mfg. Co. v. Gormully*, 144 U. S. 224 (1892). In *Harrisonville v. Dickey Clay Co.*, 289 U. S. 334, 338 (1933) this Court refused to enjoin a city whose sewage disposal system created a nuisance on a private stock farm, since an injunction would cause the city "grossly disproportionate hardship" and "an important public interest would be prejudiced." See also *Texas & Pacific R. Co. v. Marshall*, 136 U. S. 393, 405 (1890).

<sup>191</sup> *Willard v. Taylor*, 75 U. S. (8 Wall.) 557 (1869); *Clarke v. Aiken*, 276 Fed. 21; *Coombs v. Lennox Realty Co.*, 111 Me. 178, 88 Atl. 477 (1913); *Madison v. Ducktown Sulphur, Copper & Iron Co.*, 113 Tenn. 331, 83 S.W. 658 (1904).

decrees inflict directly on the grantees<sup>192</sup> and indirectly on all members of the excluded group as well as the general community, clearly outweighs any benefit which the respondents may conceivably derive from injunctive enforcement of the covenant. Because of these covenants, together with the racial restrictive covenants on large amounts of other land, millions of American citizens are denied access to adequate housing. These covenants compel them to compete in an artificially restricted market and doom them to live in slums and substandard, overcrowded homes. The extent of this discrimination is utterly contrary to the historic genius of this great country. In racial covenant cases, courts have often refused to enforce the covenant if those whom it does not exclude would suffer a hardship.<sup>193</sup> It is much more compatible with the traditional scope of equity jurisprudence for the court of conscience to refuse enforcement of the restriction because of the hardship which would be suffered by those whom the covenant attempts to exclude.<sup>194</sup>

The question here urged was specifically left open by this Court in *Corrigan v. Buckley*, 271 U. S. 323, 332.

<sup>192</sup> The record indicates that the grantees purchased their homes only after numerous hardships and prolonged unsuccessful efforts to obtain adequate housing. Several of the grantees had been evicted from their previous rented homes by the owners for their own occupancy. There is an acute shortage of housing for Negroes, even at prices inflated beyond those which white persons would have to pay. (R. 216-219, 227-228, 241, 260-64, 309-310, 334, 339, 340, 364.)

<sup>193</sup> In *Hundley v. Gorewitz*, 77 App. D. C. 48, 132 Fed. (2d) 23, 24 (1942) ("when . . . injunctive relief would not give a benefit but rather impose a hardship, the rule [as to injunctive relief] will not be enforced").

<sup>194</sup> Edgerton, J., dissenting in *Hurd v. Hodge*, 162 Fed. (2d) 233, 237 (1947) and in *Mays v. Burgess*, 147 Fed. (2d) 869, 873, 874 (1945); Traynor, J., concurring in *Fairchild v. Baines*, 25 Adv. Cal. 812, 151 P. (2d) 260, 267 (1944); Arthur T. Martin, "Segregation of Residences of Negroes," 32 Mich. L. Rev. 721, 724, 726, 738, 741 (1934); Harold I. Kahen, "Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem," 12 U. of Chi. L. Rev. 198, 206-209 (Feb. 1945).

## VI

**RACIAL RESTRICTIVE COVENANTS ARE UNREASONABLE RESTRAINTS ON ALIENATION OF PROPERTY AND VIOLATE THE FUNDAMENTAL PRINCIPLE OF OUR ECONOMIC SOCIETY THAT ALL PROPERTY BE FREELY ALIENABLE. HENCE, SUCH COVENANTS SHOULD BE HELD VOID AND UNENFORCEABLE.**

The American Law Institute has pointed out that the basic principle of private property, in our economic society, is the freedom to alienate property. This principle is based in part upon the necessity of maintaining a society controlled primarily by its living members, in part upon the social desirability of facilitating the utilization of wealth, and in part upon the social desirability of keeping property responsive to the current exigencies of its current beneficial owners . . . . Thus, to uphold them [restraints on alienation], justification must be found in the objective that is thereby sought to be accomplished or on the ground that the interference with alienation in the particular case is so negligible that the major policies furthered by freedom of alienation are not materially hampered."<sup>195</sup>

The American Law Institute lists six factors which tend, when present, to make restraints on alienation reasonable and valid:

- "1. the one imposing the restraint has some interest in land which he is seeking to protect by the enforcement of the restraint;
2. the restraint is limited in duration;

<sup>195</sup> American Law Institute, *Restatement of the Law of Property*, pp. 2379-80 (1944); see Gray, *Restraints on Alienation*, secs. 1-21 (2nd ed., 1895); Arthur T. Martin, "Segregation of Residences of Negroes," 32 Mich. L. Rev. 721, 734-741 (April, 1934).

3. the enforcement of the restraint accomplishes a worthwhile purpose;

4. the type of conveyances prohibited are ones not likely to be employed to any substantial degree by the one restrained;

5. the number of persons to whom alienation is prohibited is small . . . . ;

6. the one upon whom the restraint is imposed is a charity."

Justice Edgerton, in his dissenting opinion in the court below (R. 420, 428), has analyzed the relationship of racial restrictive covenants to these six standards, as follows: <sup>196</sup>

"By these accepted standards, the covenants in suit are clearly unreasonable and void considered merely as restraints on the freedom of owners to alienate their property. Of the six favorable factors which the Institute enumerates, (1) only, if any, is present here. (2). The restraint is perpetual. (3). Enforcement of the restraint in this case does not accomplish its purpose of maintaining a white neighborhood and defeats its purpose of increasing the value of the property. Moreover, a purpose which, as *Buchanan v. Warley* holds, legislatures are constitutionally forbidden to accomplish, cannot be considered a 'worthwhile' purpose . . . instead, of being worthwhile these covenants do great harm. (4). The 'type of conveyances prohibited' would be much 'employed' by the one(s) restrained, for the record shows that the restricted property can be sold to Negroes for much more than whites will pay for it. (5). 'The number of persons to whom alienation is prohibited' is enormous. Such persons are more than a quarter of the population of the District of Columbia. In respect of the number of possible purchasers as well as the price which some of them are ready to pay, the landowners'

<sup>196</sup> 162 F. (2nd) 233, at p. 242.

market is most severely as well as permanently impaired. No other sort of restraint of any comparable degree of severity has ever been upheld."

The covenant here involved would prevent not only all Negroes, but also any other "colored person" from acquiring this land. This vague term could include many American citizens of American Indian,<sup>197</sup> Puerto Rican, Hawaiian, Filipino, Hindu, Chinese, Japanese, Mexican, Latin-American, Spanish, Cuban, Arab, and other ancestry. Probably 20,000,000 citizens of the United States are thus restricted from the purchase and sale of residential property.<sup>198</sup> The breadth of this restraint makes it plainly unreasonable, irrespective of whether the covenant is in the form of a restraint against the sale and transfer of the legal title, or in the form of a restraint on the use and occupancy of the property for residential purposes. Both technically and practically, each form of restraint is a restraint upon alienation. Since the rights of use and occupancy are major sticks in the bundle of legal rights known as a fee simple, the restriction against use and occupancy restricts the grantor's power of alienation. And since very few, if any, "Negroes or colored persons" invest in property which can because of restrictive covenants be used only by white people, a covenant which bars the use and occupancy of the property by "any Negro or colored person" effectively restrains its alienation to them. In *Buchanan v. Warley*, 245 U. S. 60, 73, involving a restriction against occupancy, this Court recognized that "In effect, premises situated as are those

<sup>197</sup> Petitioner Hurd, although found by the trial court to be a Negro, states that he is a Mohawk Indian (R. 238).

<sup>198</sup> In comparison, it may be noted that restraints on alienation have been held invalid where only two persons were excluded, *Jenne v. Jenne*, 271 Ill. 526, 111 N.E. 540; and where only the relatives of the testator and his widow were excluded, *Barnard's Lessee v. Bailey*, 2 Har. (Del.) 56 (1836).

in question in the so-called white block are effectively debarred from sale to persons of color, because if sold they cannot be occupied by the purchaser nor by him sold to another of the same color."

## VII

**COVENANTS RESTRICTING THE USE OF LAND ARE ENTIRELY DIFFERENT FROM COVENANTS WHICH, SOLELY ON THE BASIS OF RACE OR CREED, RESTRICT THE OCCUPANCY OF LAND. DECISIONS UPHOLDING THE FORMER ARE THEREFORE IRRELEVANT TO THE LATTER TYPE OF COVENANT.**

It has been argued that since restrictions against the use of land for such purposes as distilleries, saloons, slaughterhouses, tanneries, stables, etc., are valid and enforceable, restrictive covenants against *occupancy* of the land by any member of a race of people are equally valid. There is, however, no similarity between these two kinds of uses, or between covenants making the respective restrictions.

*A. Constitutional differences:* The use of land for saloons, factories, slaughterhouses, etc. may be barred from residential districts by legislation,<sup>199</sup> and therefore, may be, and has been, barred by other forms of governmental action, including judgments by courts enforcing private covenants restricting such uses.<sup>200</sup> The occupancy of land by designated races or creeds, however, may not be barred by legislation,<sup>201</sup> and therefore it is equally unconstitutional for

<sup>199</sup> *Reinman v. Little Rock*, 237 U. S. 171 (livery stables); *Hadacheck v. Los Angeles*, 239 U. S. 394 (brick factory); *Pierce Oil Corporation v. City of Hope*, 248 U. S. 498 (oil tanks); *Village of Euclid v. Ambler Realty Co.*, 272 U. S. 365 (comprehensive zoning of business and residential districts).

<sup>200</sup> *Cowell v. Springs Company*, 100 U. S. 55 (covenant against manufacture or sale of intoxicating liquors).

<sup>201</sup> *Buchanan v. Warley*, 245 U. S. 60; *Harmon v. Tyler*, 273 U. S. 668; *City of Richmond v. Deans*, 281 U. S. 704.

the government to bring about the very same result by any other form of governmental action.

*B. Different purposes and application.* The purpose of the covenants forbidding the use of land for saloons, factories, apartment houses, etc. is to limit or control the use of land. Such covenants affect only the use of the land and apply equally to all persons using the land. No person, irrespective of his race or creed, could operate a brewery on a tract covered by an appropriate covenant against breweries. Racial restrictive covenants, designed to segregate peoples, are, however, directed not against use of the property but against *occupancy by individuals* who will use the property, and does not apply to all persons equally. Yet the kind of use which would be made by the persons whom the racial restrictive covenants would permit to occupy the land, would concededly be identical with the use made by persons whom such covenants attempt to exclude.

*C. Different effects on property rights.* In our democratic society in which competition and private property are basic institutions, the right of the individual to own property is one of the fundamental rights of citizenship. This right to own real property includes the right to occupy that property. The use (or building) restriction covenants have never destroyed the right of ownership or the right of occupancy, but simply controlled the use to which the land was put by whoever owned or occupied the land. The racial restrictive covenants, however, do not affect the use to which the land is put by the unrestricted owner or occupant, and are directed solely to depriving (a) members of the proscribed group of their right to own and occupy the land, and (b) the landowner of his right either to sell his own land to members of the proscribed group or to permit them to occupy his land.

*D. Different effects on human rights.* The imposition of restrictions on uses of land *promotes* the human right of all peoples to live in a healthy, safe and uncongested residential neighborhood. The racial restrictive covenant, however, has precisely the opposite effect on the human right to adequate housing of a large proportion of the population,<sup>202</sup> although in no way does it make the racially covenanted property more healthful, safe, or uncongested for those whom it permits to live on the property.

*E. Different bases.* The validity and enforceability of use restrictions on land, pursuant to legislative zoning statutes<sup>203</sup> and pursuant to private covenants,<sup>204</sup> have been bottomed on the relevancy of these use restrictions to pub-

<sup>202</sup> See section I B of this brief.

<sup>203</sup> In *Village of Euclid v. Ambler Realty Company*, 272 U. S. 365, involving the validity of an ordinance excluding industrial establishments from residential districts of the municipality, this Court stated: "The ordinance now under review, and all similar laws and regulations, must find their justification in some aspect of the police power, asserted for the public welfare." (272 U. S. 365, 387.) This Court held the ordinance valid because it found "that the exclusion of buildings devoted to business, trade, etc., from residential districts, bears a rational relation to the health and safety of the community" (at p. 391), and that the ordinance was not "arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare" (at p. 395).

<sup>204</sup> *Cowell v. Springs Company*, 100 U. S. 55, 56, involved a condition in a conveyance "that intoxicating liquors should never be manufactured, sold, or otherwise disposed of as a beverage in any place of public resort on the premises." In upholding the validity of this covenant, this Court stated (100 U. S. 55, 57): "The reports are full of cases where conditions imposing restrictions upon the uses to which property conveyed in fee may be subjected have been upheld. In this way slaughter-houses, soap-factories, distilleries, livery-stables, tanneries, and machine-shops have, in a multitude of instances, been excluded from particular localities, which, thus freed from unpleasant sights, noxious vapors, or disturbing noises, have become desirable as places for residences of families. To hold that conditions for their exclusion from premises conveyed are inoperative, would defeat numerous arrangements in our large cities for the health and comfort of whole neighborhoods."

"The condition in the deed of the plaintiff against the manufacture or the sale of intoxicating liquors as a beverage at any place of public resort

lic health, safety, morals, and general welfare. This Court, however, has denied the right of legislatures to enact ordinances which, solely on the basis of race, prevent members of a designated race from acquiring and occupying land, holding that such ordinances have no relevancy to "the public health, convenience, or welfare." *Buchanan v. Warley*, 245 U. S. 60; <sup>205</sup> *Harmon v. Tyler*, 273 U. S. 668.<sup>206</sup> It is plain that the reason why legislative attempts to zone by race are in violation of due process, whereas legislative imposition of building or use restrictions are not, is precisely because racial zoning affects a class of persons solely on the basis of race whereas the building or use restrictions take no account of persons or their race by relate solely to the uses of the land. The same basic distinction exists between covenants which restrict certain *uses* of land by all persons and covenants which restrict the *occupancy* of land by certain persons solely on the basis of their race or creed.

Thus, any attempt to relate to this case the decisions upholding covenants merely restricting land use, not only

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on the premises, was not subversive of the estate conveyed. *It left the estate alienable and inheritable, and free to be subjected to other uses. It was not unlawful nor against public policy, but, on the contrary, it was imposed in the interest of public health and morality.*" (Emphasis supplied.)

<sup>205</sup> In *Buchanan v. Warley*, this Court said: "The disposition and use of property may be controlled in the exercise of the police power in the interest of the public health, convenience, or welfare. Harmful occupations may be controlled and regulated. Legitimate business may also be regulated in the interest of the public. Certain uses of property may be confined to portions of the municipality other than the resident district, such as livery stables, brickyards and the like, because of the impairment of the health and comfort of the occupants of neighboring property. Many illustrations might be given from the decisions of this court, and other courts, of this principle, but these cases do not touch the one at bar." (245 U. S. 60, 74-75.) (Emphasis supplied.)

<sup>206</sup> In *Harmon v. Tyler*, this Court reversed a decision of the Supreme Court of Louisiana which had upheld a racial residential segregation ordinance as "only another kind of zoning ordinance." See *Tyler v. Harmon*, 158 La. 439, 104 So. 200, 206; *ibid*, 160 La. 943, 107 So. 704.

ignores the difference between *use* and *occupancy*, but also erroneously seeks to apply those decisions to justify governmental action through its judicial arm to achieve a result, against the will of willing sellers and willing buyers, which the government is forbidden to achieve through its legislative arm. In addition, it is plain that the two types of covenants (a) have fundamentally different purposes and application, (b) have different effects on property rights, (c) have different effects on human rights and (d) lack the main foundation for the use restrictions, namely, their relation to the public health, safety, morals and general welfare. Since there is no real similarity between the two types of covenants, decisions on the one type of covenant have no relevancy to the other type of covenant.

### VIII

#### WORLD WAR II

A basic aim of the United States and the allied nations in World War II was the defeat of the same principle of racism which underlies the racial restrictive covenant in this case. To uphold this racial restrictive covenant would nullify the victories won by the United States and the allied nations at such great cost in that war, and deliberately ignore the tensions and misery which the exaltation of racism has imposed on the entire world.<sup>207</sup>

<sup>207</sup> Professor Warren A. Seavey has concisely indicated the relationship of war to the treatment accorded to national minorities: "... we cannot permit the problems caused by the failure to deal justly with racial and religious minorities again to prove a catalyst for war, nor can we fail to realize that any claims of the white race to be a people set apart will bring disaster. We cannot long postpone the requirement of equal treatment for all. If nothing else has persuaded us, rocket propulsion and atomic bombing should convert us to the belief that we must now set our national and international houses in order." Warren A. Seavey, "International Protection of Basic Interests," 243 *Annals of the American Academy of Political and Social Science*, 50, 52 (Jan. 1946).

**CONCLUSION**

It is respectfully requested that this Court, for the reasons here urged, reverse the judgments of the court below.

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SPOTTSWOOD W. ROBINSON, III,  
*Attorneys for Petitioners.*

Date: November 17, 1947.

*We acknowledge the technical assistance in assembling material and in the preparation of this brief rendered by the American Council on Race Relations (Louis Wirth and Robert C. Weaver), Fisk University (Charles S. Johnson and Herman H. Long), Julius Rosenwald Fund (Joseph D. Lohman), Robert C. Wasson, Leon Zitver, and many other friends.*

## APPENDIX

### MAP OF DISTRICT OF COLUMBIA Showing Districts

1930-31

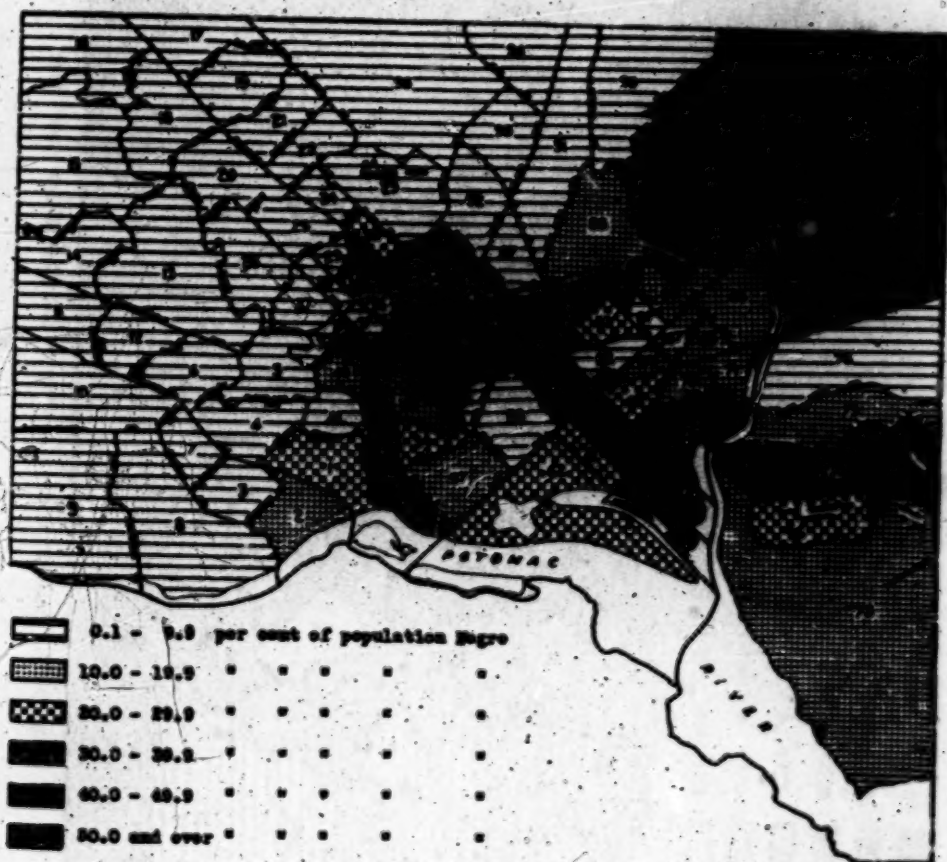
#### Chart No.

1. Percent of Population Negro, 1940.
2. Percent of Dwelling Units with 1.41 or more Persons per room, 1940.
3. Tuberculosis Death Rate (All Forms), 1940.
4. Infant Mortality Rate, 1937.
5. Total Arrests Made by Metropolitan Police During 1937 of Persons under 18 Years of Age.
6. Juvenile Court—Delinquent Children Committed to Institutions or Placed on Probation during 1937.
7. Number of children 5 to 14 years of age, inclusive, 1936-1938.
8. St. Elizabeth's Hospital Intake (Pediatric Cases) 1937.



# PERCENT OF POPULATION NEGRO, 1940

## DISTRICT OF COLUMBIA

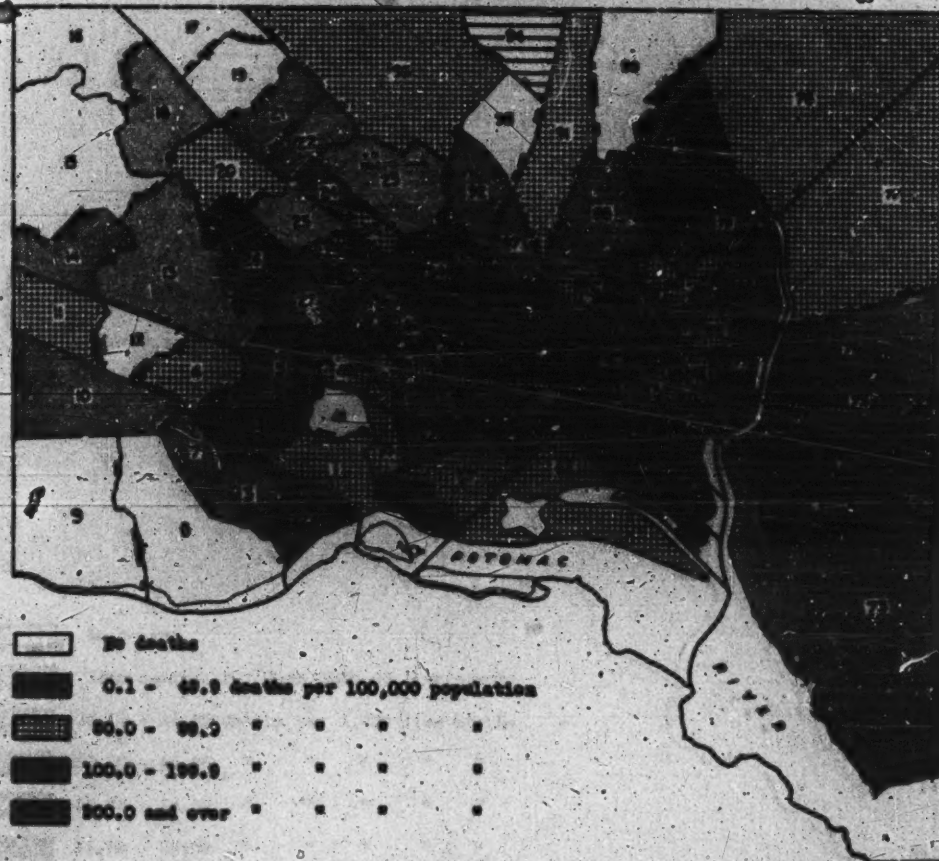


Department of Research  
Washington Council of Social Agencies

PER CENT OF DRILLING SITES WITH 1.51 OR MORE POUNDS PER FOOT, 1940



TUBERCULOSIS DEATH RATE (ALL FORMS) IN THE DISTRICT OF COLUMBIA, 1940  
(per 100,000 population)  
(Current Street of Residence of Deceased)



Department of Health  
Washington Council of Social Agencies

137

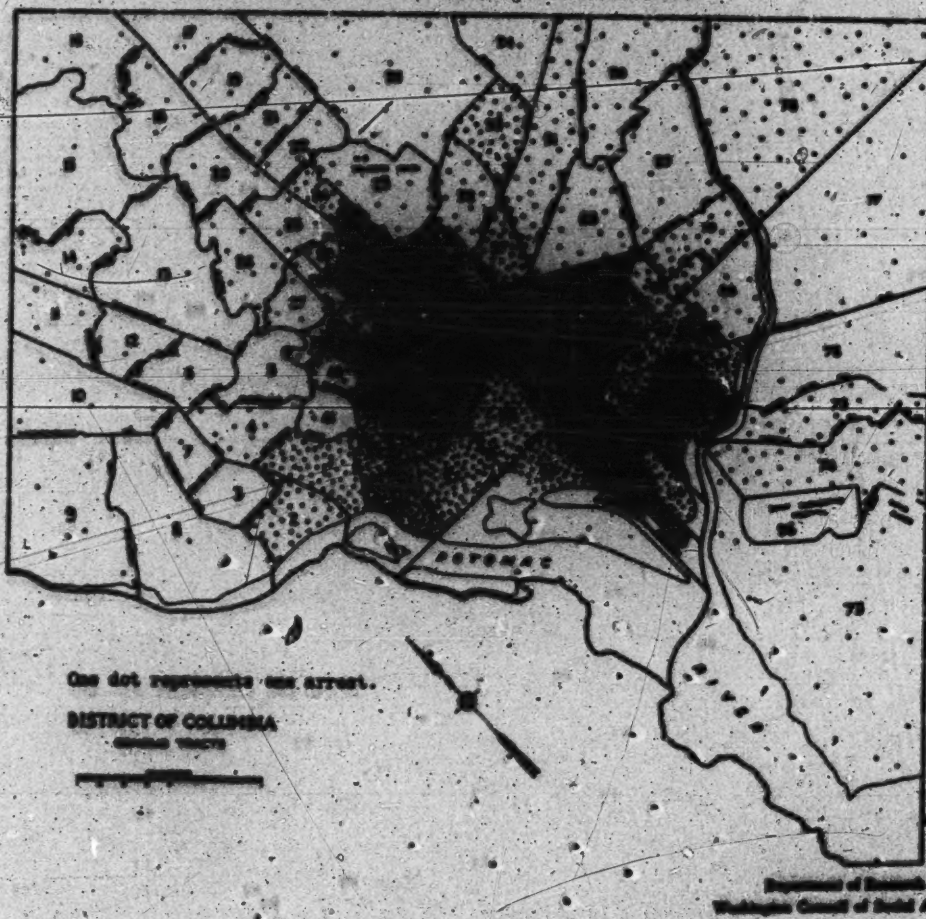
CHART 3

INFANT-MORTALITY RATE IN THE DISTRICT OF COLUMBIA, 1927  
(per 1,000 live births)  
(Census Tract of Residence of Mother)

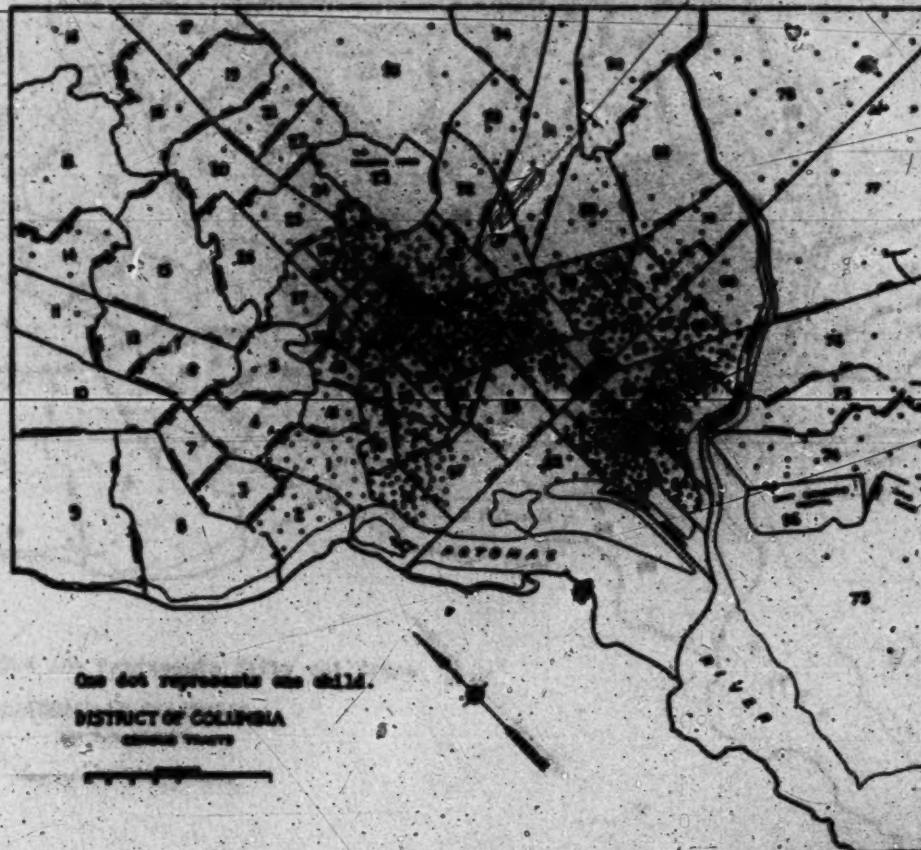


# District of Columbia

TOTAL ARRESTS MADE BY METROPOLITAN POLICE DURING 1937 OF PERSONS UNDER 21 YEARS OF AGE  
(Exclusive of Traffic Violations)  
( Census Tract of Residence of Persons Arrested )



JUVENILE COURT OF THE DISTRICT OF COLUMBIA  
 Delinquent Children Committed to Institutions or Placed on Probation During 1907  
 (Shows Tract of Residence of Children)



One dot represents one child.

DISTRICT OF COLUMBIA

Shows Tract

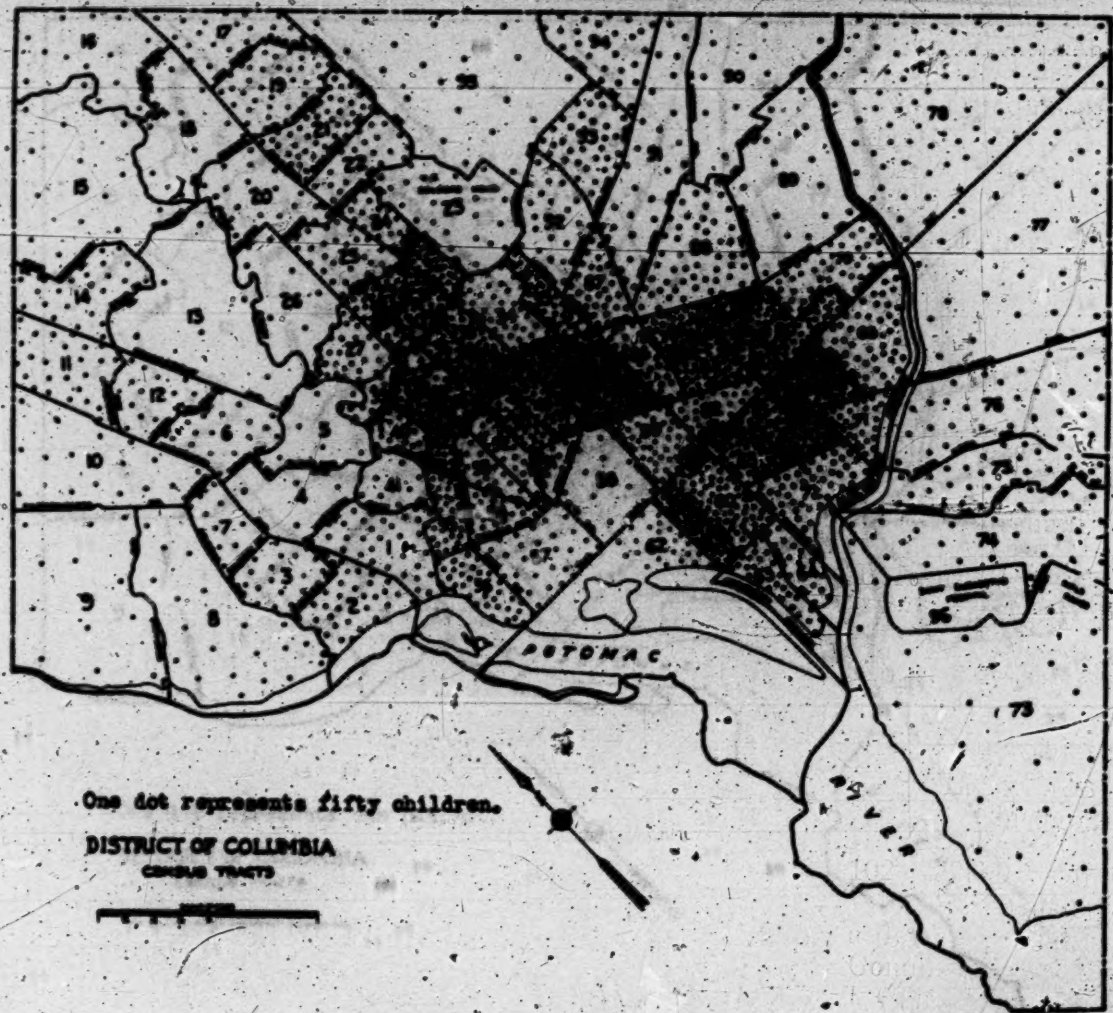
Scale

Department of Records  
 Washington Council of Social Agencies

140

Chart 6

(Census tract of Government of Columbia)



One dot represents fifty children.

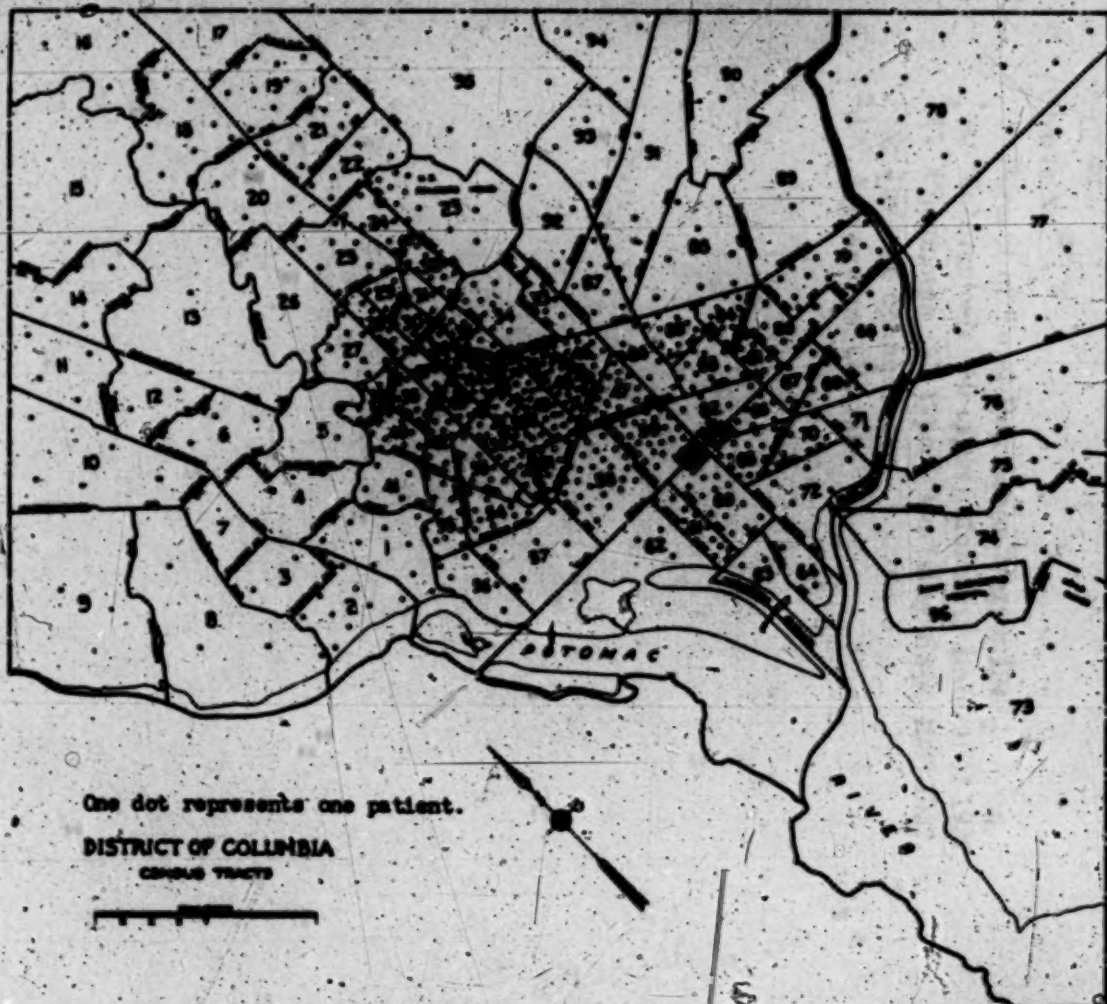
DISTRICT OF COLUMBIA  
CENSUS TRACTS



142

Chart 8

District of Columbia



Testimony of Daniel Peterkin

sec. 51. Off. the recd.

**APPENDIX**

**MAPS OF CHICAGO, ILLINOIS, SHOWING DISTRIBUTION OF:**

**Charts No.**

9. Percent of Total Population Negro, 1940.
10. Tuberculosis (all types) Mortality Rate, 1931-1937.
11. Pneumonia (all types) Mortality Rate, 1933-1937.
12. Juvenile delinquency.
13. Average insanity rate.

APPENDIX

THE HISTORY OF THE BATTLE OF BLOOMINGDALE

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THE HISTORY OF THE BATTLE OF BLOOMINGDALE

## Chart 9

# COMMUNITY AREAS OF CHICAGO

AS ADOPTED BY CONGRESS JANUARY, 1940

PER CENT OF TOTAL  
POPULATION NEGRO  
1940

### LEGEND

PER CENT

0 TO 99

1 TO 29

10 TO 39.6

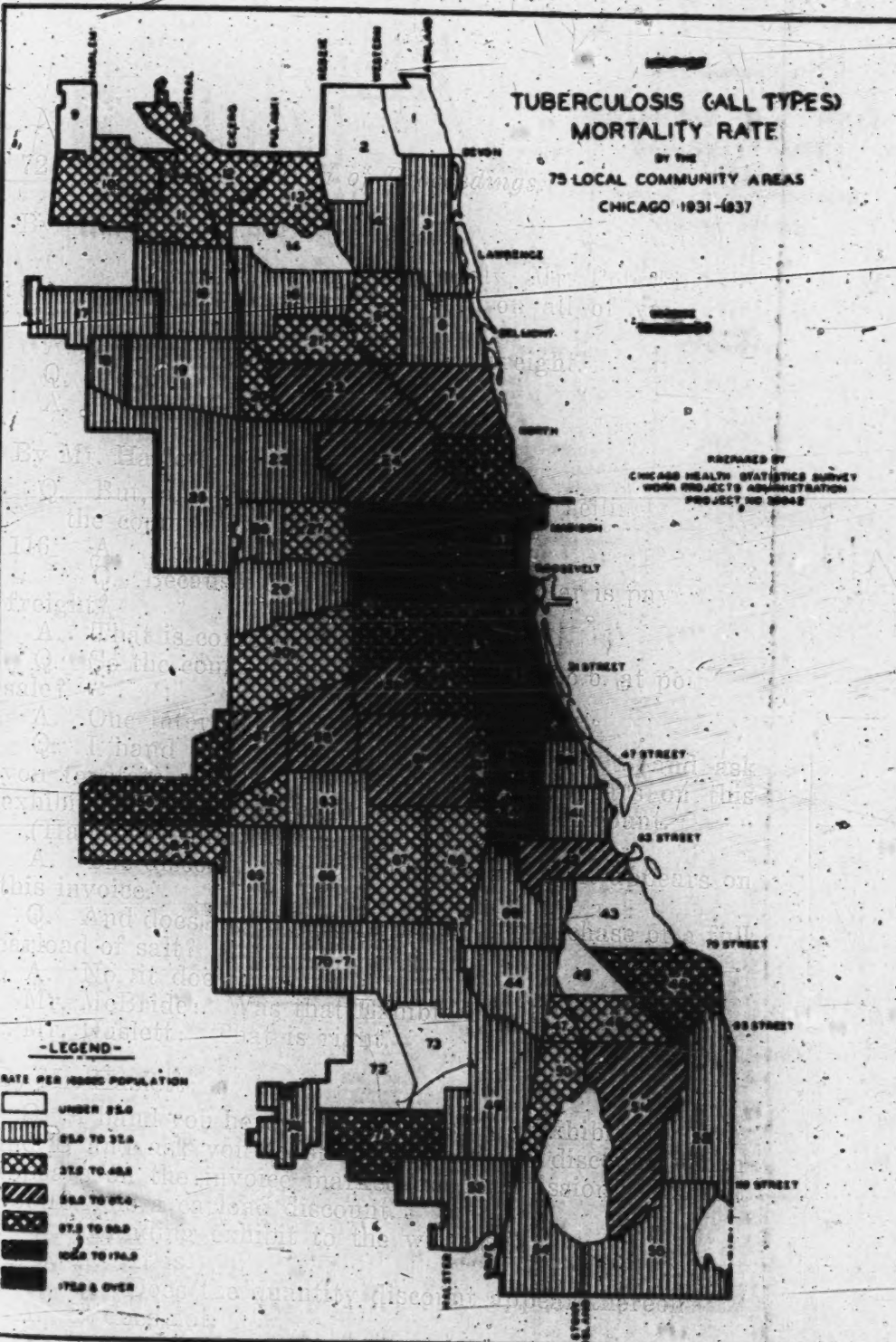
**90 TO 1000**

**SOURCE:  
SIXTEENTH  
U.S. CENSUS**

**Abstract**

**CHICAGO CENSUS ADVISORY COMMITTEE**











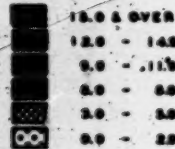
## COMMUNITY AREAS OF CHICAGO

AS ADOPTED BY CENSUS BUREAU 1930.

## JUVENILE DELINQUENCY RATES

TOTAL MALE JUVENILE COURT  
DELINQUENCY PETITIONS 1927  
- 1933 PER 100 MALES  
10 - 16 YEARS OF AGE, 1930

## RATE



MAP PREPARED BY

UNDER THE DIRECTION OF  
LOUIS W. BAKER  
AND  
NATHAN BAKER

FOR THE  
SOCIAL SCIENCE RESEARCH  
COMMITTEE  
UNIVERSITY OF CHICAGO

DATES FURNISHED BY  
CLYDE E. SHAW  
HENRY A. MC RAY



Area	Rate	Area	Rate	Area	Rate
1	15.0 & over	10	12.0 - 14.9	19	9.0 - 11.9
2	15.0 & over	11	12.0 - 14.9	20	9.0 - 11.9
3	15.0 & over	12	12.0 - 14.9	21	9.0 - 11.9
4	15.0 & over	13	12.0 - 14.9	22	9.0 - 11.9
5	15.0 & over	14	12.0 - 14.9	23	9.0 - 11.9
6	15.0 & over	15	12.0 - 14.9	24	9.0 - 11.9
7	15.0 & over	16	12.0 - 14.9	25	9.0 - 11.9
8	15.0 & over	17	12.0 - 14.9	26	9.0 - 11.9
9	15.0 & over	18	12.0 - 14.9	27	9.0 - 11.9
10	15.0 & over	19	12.0 - 14.9	28	9.0 - 11.9
11	15.0 & over	20	9.0 - 11.9	29	9.0 - 11.9
12	15.0 & over	21	9.0 - 11.9	30	9.0 - 11.9
13	15.0 & over	22	9.0 - 11.9	31	9.0 - 11.9
14	15.0 & over	23	9.0 - 11.9	32	9.0 - 11.9
15	15.0 & over	24	9.0 - 11.9	33	9.0 - 11.9
16	15.0 & over	25	9.0 - 11.9	34	9.0 - 11.9
17	15.0 & over	26	9.0 - 11.9	35	9.0 - 11.9
18	15.0 & over	27	9.0 - 11.9	36	9.0 - 11.9
19	15.0 & over	28	9.0 - 11.9	37	9.0 - 11.9
20	15.0 & over	29	9.0 - 11.9	38	9.0 - 11.9
21	15.0 & over	30	9.0 - 11.9	39	9.0 - 11.9
22	15.0 & over	31	9.0 - 11.9	40	9.0 - 11.9
23	15.0 & over	32	9.0 - 11.9	41	9.0 - 11.9
24	15.0 & over	33	9.0 - 11.9	42	9.0 - 11.9
25	15.0 & over	34	9.0 - 11.9	43	9.0 - 11.9
26	15.0 & over	35	9.0 - 11.9	44	9.0 - 11.9
27	15.0 & over	36	9.0 - 11.9	45	9.0 - 11.9
28	15.0 & over	37	9.0 - 11.9	46	9.0 - 11.9
29	15.0 & over	38	9.0 - 11.9	47	9.0 - 11.9
30	15.0 & over	39	9.0 - 11.9	48	9.0 - 11.9
31	15.0 & over	40	9.0 - 11.9	49	9.0 - 11.9
32	15.0 & over	41	9.0 - 11.9	50	9.0 - 11.9
33	15.0 & over	42	9.0 - 11.9	51	9.0 - 11.9
34	15.0 & over	43	9.0 - 11.9	52	9.0 - 11.9
35	15.0 & over	44	9.0 - 11.9	53	9.0 - 11.9
36	15.0 & over	45	9.0 - 11.9	54	9.0 - 11.9
37	15.0 & over	46	9.0 - 11.9	55	9.0 - 11.9
38	15.0 & over	47	9.0 - 11.9	56	9.0 - 11.9
39	15.0 & over	48	9.0 - 11.9	57	9.0 - 11.9
40	15.0 & over	49	9.0 - 11.9	58	9.0 - 11.9
41	15.0 & over	50	9.0 - 11.9	59	9.0 - 11.9
42	15.0 & over	51	9.0 - 11.9	60	9.0 - 11.9
43	15.0 & over	52	9.0 - 11.9	61	9.0 - 11.9
44	15.0 & over	53	9.0 - 11.9	62	9.0 - 11.9
45	15.0 & over	54	9.0 - 11.9	63	9.0 - 11.9
46	15.0 & over	55	9.0 - 11.9	64	9.0 - 11.9
47	15.0 & over	56	9.0 - 11.9	65	9.0 - 11.9
48	15.0 & over	57	9.0 - 11.9	66	9.0 - 11.9
49	15.0 & over	58	9.0 - 11.9	67	9.0 - 11.9
50	15.0 & over	59	9.0 - 11.9	68	9.0 - 11.9
51	15.0 & over	60	9.0 - 11.9	69	9.0 - 11.9
52	15.0 & over	61	9.0 - 11.9	70	9.0 - 11.9
53	15.0 & over	62	9.0 - 11.9	71	9.0 - 11.9
54	15.0 & over	63	9.0 - 11.9	72	9.0 - 11.9
55	15.0 & over	64	9.0 - 11.9	73	9.0 - 11.9
56	15.0 & over	65	9.0 - 11.9	74	9.0 - 11.9
57	15.0 & over	66	9.0 - 11.9	75	9.0 - 11.9
58	15.0 & over	67	9.0 - 11.9	76	9.0 - 11.9
59	15.0 & over	68	9.0 - 11.9	77	9.0 - 11.9
60	15.0 & over	69	9.0 - 11.9	78	9.0 - 11.9
61	15.0 & over	70	9.0 - 11.9	79	9.0 - 11.9
62	15.0 & over	71	9.0 - 11.9	80	9.0 - 11.9
63	15.0 & over	72	9.0 - 11.9	81	9.0 - 11.9
64	15.0 & over	73	9.0 - 11.9	82	9.0 - 11.9
65	15.0 & over	74	9.0 - 11.9	83	9.0 - 11.9
66	15.0 & over	75	9.0 - 11.9	84	9.0 - 11.9
67	15.0 & over	76	9.0 - 11.9	85	9.0 - 11.9
68	15.0 & over	77	9.0 - 11.9	86	9.0 - 11.9
69	15.0 & over	78	9.0 - 11.9	87	9.0 - 11.9
70	15.0 & over	79	9.0 - 11.9	88	9.0 - 11.9
71	15.0 & over	80	9.0 - 11.9	89	9.0 - 11.9
72	15.0 & over	81	9.0 - 11.9	90	9.0 - 11.9
73	15.0 & over	82	9.0 - 11.9	91	9.0 - 11.9
74	15.0 & over	83	9.0 - 11.9	92	9.0 - 11.9
75	15.0 & over	84	9.0 - 11.9	93	9.0 - 11.9
76	15.0 & over	85	9.0 - 11.9	94	9.0 - 11.9
77	15.0 & over	86	9.0 - 11.9	95	9.0 - 11.9
78	15.0 & over	87	9.0 - 11.9	96	9.0 - 11.9
79	15.0 & over	88	9.0 - 11.9	97	9.0 - 11.9
80	15.0 & over	89	9.0 - 11.9	98	9.0 - 11.9
81	15.0 & over	90	9.0 - 11.9	99	9.0 - 11.9
82	15.0 & over	91	9.0 - 11.9	100	9.0 - 11.9



## Chart 13

SUB-COMMUNITIES  
BASED ON  
CENSUS TRACTS  
OF  
CHICAGO

AVERAGE INSANITY RATE

BASED ON 1930 POPULATION  
AGE 15 AND OVER

## LEGEND

- 150.0 AND OVER
- 120.0 - 149.9
- 90.0 - 119.9
- 60.0 - 89.9
- 30.0 - 59.9
- UNDER 30.0

MAP PREPARED BY S. GERMERAAO  
UNDER THE DIRECTION OF DR. E.  
W. BURGESS AND ETHEL SHANNAS

DATA FROM FOUR STATE HOSPITALS  
AND EIGHT PRIVATE INSTITUTIONS.



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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 290

JAMES M. HURD AND MARY I. HURD,

vs.

*Petitioners,*

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,

*Respondents*

No. 291

RAPHAEL G. URICIOLO, ROBERT H. ROWE, ISABELLE J. ROWE,  
HERBERT B. SAVAGE, GEORGIA N. SAVAGE AND PAULINE B.  
STEWART,

*Petitioners,*

vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DeRITA, VICTORIA DeRITA, CONSTANTINO MARCHEGIANI,  
MARY M. MARCHEGIANI, BALDUINO GIANCOLA AND MAR-  
GARET GIANCOLA,

*Respondents*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

CONSOLIDATED REPLY BRIEF FOR PETITIONERS

RAPHAEL G. URICIOLO, *pro se,*

CHARLES H. HOUSTON,  
PHINEAS INDRIETZ,  
SPOTTSWOOD W. ROBINSON, III,  
*Attorneys for Petitioners.*

January 13, 1948,  
Washington, D. C.



# INDEX

	Page
Consolidated Reply Brief for Petitioners	1
I. The briefs of the respondents and of the "protective" associations supporting racial restrictive covenants demonstrate that the covenants are devices for community zoning designed to achieve by circumvention the very results of racial residential zoning which this Court has held to be unconstitutional. Such circumvention is effectuated through the use of government power, in violation of the Constitution	2
II. Respondents' contention that the Petitioners have no rights because they knew or had constructive notice of the restriction is entirely without merit	12
III. None of the other propositions urged and decisions cited by the respondents support their contentions here	15
IV. Further expressions of the policy of the United States against racial discrimination	19
(a) United Nations Commission on Human Rights	19
(b) The President's Commission on Higher Education	22
(c) President Truman's State-of-the-Union Message to Congress (January 7, 1948)	23
V. Racism and World War II	24
Conclusion	25

## TABLE OF AUTHORITIES CITED

### Cases:

<i>A. F. of L. v. Swing</i> , 312 U. S. 321 (1941)	17
<i>Anderson v. Carkins</i> , 135 U. S. 483 (1890)	14
<i>Anderson National Bank v. Lueckett</i> , 321 U. S. 233 (1944)	17
<i>Beasley v. Texas &amp; Pacific Ry. Co.</i> , 191 U. S. 492 (1903)	14, 18

	Page
<i>Bement v. National Harrow Company</i> , 186 U. S. 70 (1902)	14
<i>Bridges v. California</i> , 314 U. S. 252 (1941)	13
<i>Brown v. Mississippi</i> , 297 U. S. 278 (1936)	16
<i>Buchanan v. Warley</i> , 245 U. S. 60 (1917)	7, 10, 13, 15
<i>Burt v. Union Central Life Ins. Co.</i> , 187 U. S. 362 (1902)	14
<i>City of Richmond v. Deans</i> , 281 U. S. 704 (1930)	7, 13
<i>Civil Rights Cases</i> , 109 U. S. 3 (1883)	12
<i>Continental Wall Paper Co. v. Voight &amp; Sons Co.</i> , 212 U. S. 227 (1909)	14
<i>Cowell v. Springs Co.</i> , 100 U. S. 55 (1879)	19
<i>Dr. Miles Medical Co. v. Park &amp; Sons Co.</i> , 220 U. S. 373 (1911)	14
<i>Edward Katzinger Co. v. Chicago Metallic Mfg. Co.</i> , 329 U. S. 394 (1947)	14
<i>Ex Parte Virginia</i> , 100 U. S. 339, 25 L. Ed. 667 (March 1, 1880)	16
<i>Fiske v. Kansas</i> , 274 U. S. 380 (1927)	15
<i>Harmon v. Tyler</i> , 273 U. S. 668 (1927)	7, 8, 10, 11, 13
<i>Hirabayashi v. United States</i> , 320 U. S. 81 (1943)	16
<i>Hovey v. Elliott</i> , 167 U. S. 409 (1897)	17
<i>Hurd v. Hodge</i> , 162 F. (2d) 233 (1947)	11
<i>Hyer v. Richmond Traction Co.</i> , 168 U. S. 471 (1897)	14
<i>Kennett v. Chambers</i> , 55 U. S. (14 How.) 38 (1852)	14
<i>Korematsu v. United States</i> , 323 U. S. 214 (1944)	16
<i>MacGregor v. Westinghouse Electric Mfg. Co.</i> , 329 U. S. 402 (1947)	14
<i>Marino v. Ragen</i> , — U. S. — (No. 93, Dec. 22, 1947)	17
<i>Marsh v. Alabama</i> , 326 U. S. 501 (1946)	7, 8, 11, 15
<i>McMullen v. Hoffman</i> , 174 U. S. 639 (1899)	14
<i>Nixon v. Condon</i> , 286 U. S. 73 (1932)	9
<i>Nixon v. Herndon</i> , 273 U. S. 536 (1927)	9
<i>Norcross v. James</i> , 140 Mass. 188, 2 N. E. 946 (1885)	18
<i>Prudential Insurance Company v. Cheek</i> , 259 U. S. 530 (1922)	17

	Page
<i>Railway Mail Association v. Corsi</i> , 326 U. S. 88 (1945)	17, 18
<i>Smith v. Allwright</i> , 321 U. S. 649 (1944)	7, 8, 9, 11
<i>Smith v. Texas</i> , 311 U. S. 128 (1940)	16
<i>Sola Electric Co. v. Jefferson Electric Co.</i> , 317 U. S. 173 (1942)	14
<i>Sprott v. United States</i> , 87 U. S. (20 Wall.) 459 (1874)	14
<i>Steele v. Louisville &amp; Nashville R. Co.</i> , 323 U. S. 192 (1944)	8, 10, 11, 16
<i>Strauder v. West Virginia</i> , 100 U. S. 303, 25 L. Ed. 664 (March 1, 1880)	16
<i>Texas &amp; Pac. Ry. Co. v. Marshall</i> , 136 U. S. 393 (1890)	14
<i>Thomas v. Collins</i> , 323 U. S. 516 (1945)	15
<i>Tyler v. Harmon</i> , 158 La. 439, 104 So. 200 (1925); <i>Ibid.</i> , 160 La. 943, 107 So. 704 (1926)	10
<i>United States v. Dunnington</i> , 146 U. S. 338 (1892)	17
<i>Yick Wo v. Hopkins</i> , 118 U. S. 356 (1886)	16
Constitution and Statutes:	
Fifth Amendment	16
Thirteenth Amendment	24
Fourteenth Amendment	12, 16, 17, 24
Fifteenth Amendment	24
Revised Statutes, sec. 1978	13
8 U. S. C. 42	13
Briefs on Racial Restrictive Covenant Cases Now Under Consideration by This Court:	
<i>American Veterans Committee</i> , Brief of, in Nos. 72, 87, 290 and 291	5
<i>Arlington Heights Property Owners Association, Inc., et al.</i> , Brief of, in No. 72	3
<i>California Amici Curiae</i> , Brief of, in No. 87	6
<i>Federation of Citizens Associations of the District of Columbia, Inc.</i> , Brief of, in Nos. 290 and 291	3
<i>Japanese American Citizens League</i> , Brief of, in No. 290	6

	Page
<i>Mount Royal Protective Association</i> , Brief of, in Nos. 87, 290, and 291	4
<i>National Association of Real Estate Boards</i> , Brief of, in No. 72	16
<i>Petitioners</i> , Consolidated Brief of, in Nos. 290 and 291	5, 7, 12, 17, 19
<i>Respondents</i> , Brief of, in 72 (St. Louis)	12
<i>Respondents</i> , Brief of, in No. 87 (Detroit)	3, 12, 17
<i>Respondents</i> , Brief of, in Nos. 290 and 291 (District of Columbia)	2, 12, 17
 Texts, Periodicals and Miscellaneous:	
Anson on Contracts, sec. 272 (Patterson ed., 1939)	18
Dean, John P., "None Other Than Caucasian: A Study of Race Covenants," 23 <i>Journal of Land &amp; Public Utility Economics</i> , p. 428 (Nov. 1947)	5
<i>Ibid.</i> , <i>Architectural Forum</i> , p. 16 (Oct. 1947)	5
Long, Herman H., and Johnson, Charles S., <i>People vs. Property, Race Restrictive Covenants in Housing</i> (Fisk University Press, 1947)	5, 6
Miller, Loren, "Race Restrictions on Ownership or Occupancy of Land," 7 <i>Lawy. Guild Rev.</i> 99 (May-June, 1947)	15
President's Commission on Higher Education, Report of, <i>Higher Education for American Democracy</i> (Govt. Printing Office, December, 1947)	22, 23, 25
President's Committee on Civil Rights, Report of, <i>To Secure These Rights</i> (Govt. Printing Off., Oct. 29, 1947)	7, 25
President Truman's Address at 38th Annual Conference of National Association for the Advancement of Colored People (June-29, 1947). 93 Cong. Rec. A-3505, July 2, 1947	24
President Truman's Message to the 14th Annual Convention of the National Association of Housing Officials meeting on Nov. 17, 1947	24

President Truman's State-of-the-Union Message to Congress (Jan. 7, 1948)	23
Spaulding, Charles B., "Housing Problems of Minority Groups in Los Angeles County," 248	
<i>Annals of the American Academy of Political and Social Science</i> 220 (Nov. 1946)	6
<i>The Evening Star</i> , Washington, D. C., p. A-2 (Nov. 17, 1947)	24
<i>The Evening Star</i> , Washington, D. C., p. A-7 (Dec. 1, 1947)	20
<i>The Evening Star</i> , Washington, D. C., p. A-21 (Dec. 14, 1947)	3
<i>The Evening Star</i> , Washington, D. C., p. A-6 (Jan. 7, 1948)	23
<i>The Washington Post</i> , p. 4 (June 30, 1947)	24
<i>The Washington Post</i> , p. 1 (December 24, 1947)	22
<i>The Washington Post</i> , Editorial Section, p. 1B (December 28, 1947)	22
United Nations, Charter of the, Articles 55(c), 56 (59 Stat. 1031, 1046)	20, 25
United Nations Commission on Human Rights, Declaration and Convention on Human Rights,	20, 21, 25
United Nations Dept. of Public Information, Press and Publications Bureau, Lake Success, N. Y., Press Release SOC/307 (17 December, 1947)	21
United Nations Dept. of Public Information, Press and Publications Bureau, Lake Success, N. Y., Press Release SOC/310 (19 December, 1947)	21
United Nations Economic and Social Council (E/CN.4/AC.1/3 Add. 1-2 June, 1947), Commission on Human Rights Drafting Committee, International Bill of Rights, Documented Outline	21
United Nations Economic and Social Council, Division of Human Rights, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and the Protection	

	Page
of Minorities, Memorandum of 20 October, 1947 (E/CN.4/Sub.2/4)	22
U. S. Dept. of State, <i>Summary Review of the Conference on the Proposed International Declaration on Human Rights held at the Department of State, Wash., D. C., on Oct. 31, 1947</i> (issued by Division of Public Liaison, U. S. Dept. of State, on Nov. 25, 1947)	20
United States Proposal of International Declaration of Human Rights	20
Williston on Contracts, Vols. V and VI, sec. 1630, 1722, 1725, 1744A (Rev. ed., 1938)	18

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**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA**

**CONSOLIDATED REPLY BRIEF FOR PETITIONERS**

**The Petitioners submit the following Consolidated Reply  
Brief to the Respondents' Consolidated Brief.**

**THE BRIEFS OF THE RESPONDENTS AND OF THE "PROTECTIVE" ASSOCIATIONS SUPPORTING RACIAL RESTRICTIVE COVENANTS DEMONSTRATE THAT THE COVENANTS ARE DEVICES FOR COMMUNITY ZONING DESIGNED TO ACHIEVE BY CIRCUMVENTION THE VERY RESULTS OF RACIAL RESIDENTIAL ZONING WHICH THIS COURT HAS HELD TO BE UNCONSTITUTIONAL. SUCH CIRCUMVENTION IS EFFECTUATED THROUGH THE USE OF GOVERNMENT POWER, IN VIOLATION OF THE CONSTITUTION.**

In their briefs, the respondents and several of the *amici curiae*<sup>1</sup> supporting the respondents show that racial restrictive covenants constitute, and are intended to constitute, a widespread and organized zoning of urban residential neighborhoods solely on the basis of race.

*Brief of Respondents in Nos. 290 and 291 (District of Columbia) (p. 2):* ". . . All lots in the 2300 block of First Street, N. W., in Square 3125, adjoining the 20 covenanted lots on Bryant Street, are subject to the same covenant. With the exception of four houses in the 2100 block of First Street, N. W. (now occupied by Negroes) all houses on First Street, from T Street to the Soldiers Home and all houses to the east of First Street to and including Lincoln Road, from T Street north to the Soldiers Home are occupied by persons of

<sup>1</sup> Federation of Citizens Associations of the District of Columbia, Inc.; Citizens Forum of Columbia Heights, Washington, D. C.; The Wheel of Progress, Washington, D. C.; Columbia Improvement Association, Inc., Washington, D. C.; Arlington Heights Property Owners Association, Inc.; Adams to Washington Association; Southwest Wilshire District Protective Association; Charles Victor Hall Tract Association; Community Protective Association (Slauson-Manchester area); Slauson-Figueroa-Manchester-Central Property Owners Protective Association; Mount Royal Protective Association, Inc.

the white race (R. 380-381), and consisting of approximately 1000 homes, six churches, places of business and schools, all under either deed covenants or restrictive agreements on the Negro question . . . ."

*Brief of Respondents in No. 87* (Detroit) (p. 2):  
 ". . . in Seebaldt's subdivision . . . all of the properties occupied by the parties hereto are encumbered by the . . . covenant" which expressly states (R. 42) its "purpose of defining, recording and carrying out the general plan of developing the subdivision . . . uniformly . . . ."

*Brief of Federation of Citizens Associations of the District of Columbia, Inc.; Citizens Forum of Columbia Heights, Washington, D. C.; The Wheel of Progress, Washington, D. C.; and Columbia Improvement Association, Inc., Washington, D. C.* (p. 2): ". . . The Federation of Citizens Associations is a federation of sixty-nine (69) white citizens associations. These member associations cover the entire area of the District of Columbia . . . The interest of these organizations in the question at issue arises from their firm conviction . . . that the rule of law . . . validating and enforcing restrictive covenants, be confirmed by this court."<sup>2</sup>

*Brief of Arlington Heights Property Owners Association, Inc., et al.* (p. 4): "This brief is filed on behalf of the Arlington Heights Property Owners Association, Adams to Washington Association, Southwest Wilshire District Protective Association, Charles Victor Hall Tract Association, Community Protective Association (Slauson-Manchester area) and the Slauson-Figueroa-Manchester-Central Property Owners Protective Association, which are organizations comprising several thousand Caucasian prop-

<sup>2</sup> On December 13, 1947, one Newell, the spokesman of the Federation of Citizens Associations and its immediate past president, indicated in a public statement that almost one-half of the residential areas of the District of Columbia are covered by restrictive covenants. *The Evening Star*, Washington, D. C., p. A-21 (Dec. 14, 1947).

erty owners in the City of Los Angeles, California . . . who are united in their desire to maintain . . . communities inhabited by persons of their own 'race.'"

*Brief of Mount Royal Protective Association* (pp. 5-6): "The Mount Royal Protective Association, Inc. is . . . incorporated . . . for the purpose of representing the property owners in a residential part of the City of Baltimore commonly known as the Mount Royal District. This area extends . . . about six city blocks in width and a maximum of nine in length . . . Since 1921 it has fostered . . . a movement . . . to induce property owners to preserve the neighborhood for the use of white residents by executing covenants, to be recorded among the Land Records of Baltimore City, respecting the use to which the several properties could be put to the end that they could not be occupied by negroes or persons of African descent except those employed as domestic servants by the occupants. A copy of the form of covenant which was used is filed as an appendix to this brief. Over ninety per cent of the residence properties in the district have been subjected to this restriction by this means. The restriction has been kept in force, and attempted violations have been quashed by threatened suits or by injunctions obtained from local equity courts, with the result that the properties covered by the covenant have been completely restricted in fact to occupancy by white people . . . the territory immediately adjoining the Mount Royal District lying to the southwest of Entaw Place . . . is almost exclusively occupied by colored people. The same is true of much of the rest of the older part of Baltimore . . . much property has recently passed from white into negro hands at a profit to the white owners."

The respondents and their supporters thus confirm the fact that a widespread, organized and systematic pattern of racial zoning in most of the major metropolitan areas in the country now exists under the direction of "neighbor-

hood," "improvement," and "protective" associations, abetted by the real estate boards and their "Code of Ethics" to enforce racial residential segregation.

*District of Columbia.* Instances of these zoning activities in the District of Columbia are set forth in the Consolidated Brief for Petitioners (Nos. 290 and 291) at pp. 70 and 94. The Executive Secretary of the "Committee of Owners" who participated in the trial in Nos. 290 and 291 testified that the Committee sponsors and takes part in all suits to enforce racial restrictive covenants in the community (R. 70-71, 73-74). The American Veterans Committee was unable to find uncovenanted land in the District of Columbia available for its contemplated nonsegregated veterans housing project.<sup>3</sup>

*New York.* Professor Dean's survey of new subdivisions in Queens, Nassau and Southern Westchester Counties revealed widespread racial covenant zoning—"No less than 56 per cent of all homes checked were forbidden to Negroes. The proportion rises to 63 per cent for properties in developments of 20 or more houses and to 85 per cent for homes in subdivisions of 75 or more."<sup>4</sup>

*Chicago and Detroit.* The zoning activities in these cities are described in detail by the American Missionary Association in a book published after our Consolidated Brief was filed in this Court. Herman H. Long and Charles S. Johnson, *People v. Property, Race Restrictive Covenants in Housing* (Fisk University Press, 1947) (See Chap. III, "Neighborhood Improvement Associations," pp. 39-55; and Chap. IV, "Real Estate Organizations and Controls," pp. 56-72). Copies of this book have been filed with the Clerk of

<sup>3</sup> American Veterans Committee brief in Nos. 72, 87, 290 and 291, p. 9.

<sup>4</sup> John P. Dean, "None Other Than Caucasian: A Study of Race Covenants," 23 *Journal of Land & Public Utility Economics*, pp. 428, 429 (Nov. 1947); *Ibid*, *Architectural Forum*, p. 16 (October, 1947).

this Court, and three charts therefrom showing the relation between the increase in Negro population, increase in racial restrictive covenants, and increase in neighborhood improvement associations appear in the Appendix to this Brief.

*St. Louis.* The Real Estate Exchange has zoned this city on official maps distributed among all realtors and forbids sales or rentals to Negroes except in designated areas (Herman H. Long and Charles S. Johnson, *supra*, p. 61); and at the trial in No. 72, members and officers of the Marcus Avenue Improvement Association indicated that its purpose is to keep the neighborhood white by promoting covenants (R. 60, 58, 54).

*California.* Covenant zoning is particularly virulent in this state. In Los Angeles County, the San Fernando Valley Chambers of Commerce now have a "public relations firm" to promote racial segregation by "blanketing large areas" with racial covenants premised upon prospective court enforcement of the covenants;<sup>5</sup> South Pasadena is "almost completely blanketed with restrictive covenants," and concerted efforts are being made to set up the whole South San Francisco peninsula as a "white" community.<sup>6</sup>

In all of these and other cities, racial covenants cover large proportions of the city and suburban developments, and strategically block in the existing racial ghettos. Judicial enforcement of the covenants now before this Court means the perpetuation and enforcement of all such racial covenants and the exclusion from decent housing of substantial numbers and proportions of the population.

<sup>5</sup> *California Amici Curiae* brief in No. 87, p. 5; Charles B. Spaulding, "Housing Problems of Minority Groups in Los Angeles County," 248 *Annals of the American Academy of Political and Social Science*, 220 (Nov. 1948).

<sup>6</sup> *Japanese American Citizens League* brief in No. 290, p. 8.

Thus, under the guise of "private contract," this Court's decisions<sup>7</sup> that racial residential zoning is unconstitutional are being circumvented by means of covenant zoning, a method much more iniquitous than the racial zoning ordinances held unconstitutional by this Court. See Consolidated Brief for Petitioners (Nos. 290 and 291), Part I A (4), at pp. 28-30. These covenants are intended not merely to regulate the ownership and occupancy of one lot, but rather to zone and control entire neighborhoods in every city. Such zoning arrangements are essentially governmental determinations, maintained and enforced against subsequent owners of the land regardless of their wishes, and, by virtue of the operation of the recording statutes, regardless of whether or not they knew of the restriction when they purchased. And the essential characteristic of restrictive covenant litigation is to have the government maintain and enforce this zoning through use of judicial decrees, contempt citations, fines and imprisonment. Thus, judicial enforcement of racial restrictive covenants has the same effect as a racial zoning ordinance, including the equivalent of criminal sanctions (contempt proceedings). In both cases it is *the machinery and force of government* which makes the racial zoning effective.<sup>8</sup>

The unanimous attempt in the briefs of the respondents in Nos. 72, 87, 290 and 291 to clothe the discrimination in the appearance of exclusively private action is thus plainly a guise, a guise which vanishes under the impact of decisions such as *Marsh v. Alabama*, 326 U. S. 501 (1946); *Smith v.*

<sup>7</sup> *Buchanan v. Warley*, 245 U. S. 60 (1917); *Harmon v. Tyler*, 273 U. S. 668 (1927); *City of Richmond v. Deans*, 281 U. S. 704 (1930).

<sup>8</sup> The Report of the President's Committee on Civil Rights (*To Secure These Rights*, Govt. Printing Off., Oct. 29, 1947), p. 169, states: "The effectiveness of restrictive covenants depends in the last analysis on court orders enforcing the private agreement. The power of the state is thus utilized to bolster discriminatory practices. The Committee believes that every effort must be made to prevent this abuse."

*Allwright*, 321 U. S. 649 (1944); and *Steele v. Louisville & Nashville Railroad Company*, 323 U. S. 192 (1944); and *Harmon v. Tyler*, 273 U. S. 668 (1927).

In *Marsh v. Alabama*, a company which owned all the land, including the streets, of a company-owned town forbade Marsh to distribute religious literature in the streets. When Marsh refused to leave these "private" streets, she was convicted of violating a general (nondiscriminatory) state statute which made it a crime for anyone to remain on the premises after having been warned not to do so. This Court pointed out "that had the people of Chickasaw owned all the homes, and all the stores, and all the streets, and all the sidewalks, all those owners together could not have set up a municipal government with sufficient power to pass an ordinance completely barring the exercise of the constitutional right of distributing religious literature. (326 U. S. 501, 505.) And this Court held that the totality of private ownership of the town could not exercise power, enforceable in the courts, to abridge such constitutional right. The *Marsh* decision is directly applicable here. Here, members of the community have banded together as a totality of private ownership seeking by covenant zoning to adopt for the entire community restrictions which deny the constitutional rights of Negroes to acquire and use property sold to them by willing sellers. Governmental enforcement of these restrictions through the courts promulgates a racial zoning law as effectively as an ordinance. Such governmental enforcement is governmental violation of constitutional rights. And it affects a much greater number of persons than the number of inhabitants of all the company-owned towns in the Nation.

In *Smith v. Allwright*, a "private" political party excluded Negroes from membership in the party and, participation in the party primary being based on party member-

ship, the election judges refused to issue ballots to Negroes to vote in that party's primary. Pointing out that the right to vote is a right secured by the Constitution against racial discrimination by the State, this Court held that "the exclusionary action of the party was the action of the State" when the State "endorses, adopts and enforces the discrimination against Negroes. . . . The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any State because of race. This grant to the people of the opportunity for choice is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied." (321 U. S. 649, 661, 664.) The *Smith v. Allwright* decision also is directly applicable here. Here, the government through its judicial arm "endorses, adopts and enforces the discrimination against Negroes," depriving them of their constitutional right to acquire, use and dispose of property. These discriminations, embodied in private zoning arrangements, derive their vitality almost entirely from the affirmative intervention of the power of government in maintaining and enforcing these zoning arrangements. It is settled law now that the Government may not by legislation deprive Negroes of the right to vote, whether the legislation is mandatory (*Nixon v. Herndon*, 273 U. S. 536 (1927)) or whether the legislation is permissive (*Nixon v. Condon*, 286 U. S. 73 (1932)), nor may the Government achieve the very same end through the medium of "private" political parties whose discriminations the Government "endorses, adopts and enforces" (*Smith v. Allwright, supra*). Similarly, the Government may not by legislation, deprive Negroes of the right to acquire, use and occupy property, whether the legislation is mandatory

(*Buchanan v. Warley*, 245 U. S. 60. (1917)), or whether the legislation is permissive (*Harmon v. Tyler*, 273 U. S. 668 (1927)), nor may the Government achieve the very same end through the medium of "private" covenant zoning whose discriminations the government "endorses, adopts and enforces."

In *Steele v. Louisville & Nashville Railroad Co.*, this Court held that a "private" union acting as the bargaining representative of a craft or class under authority of the Railway Labor Act may not make a binding contract discriminating against members of the craft on the basis of race because "discriminations based on race alone are obviously irrelevant and invidious" (323 U. S. 192, 203). In the *Steele* case the Brotherhood of Locomotive Firemen & Enginemen relied on governmental authority to spread the effect of the racial discriminatory contract the Brotherhood had made with the carrier, over the dissenting Negro locomotive firemen. In these cases respondents rely on governmental enforcement to spread the effect of a racial discriminatory zoning covenant, made in 1906, over the entire class of prospective Negro home owners as well as over all subsequent white successors in title, irrespective of their wishes, and thereby zone the community on the basis of the "irrelevant and invidious" distinction of race alone.

In *Harmon v. Tyler*, the statute held unconstitutional by this Court prohibited Negroes from establishing residence in a white community and whites from establishing residence in a Negro community "except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the city." *Tyler v. Harmon*, 158 La. 439, 104 So. 200, 206 (1925); *Ibid.*, 160 La. 943, 107 So. 704 (1926). In so far as the excluded person is concerned, there is not a shadow of difference between the *Harmon* case (public racial zoning) and a racial restrictive covenant.

case ("private" racial zoning). In both, whether the Negro is excluded from his property depends upon the concurrence or agreement of the white property owners. In the *Harmon* case, the white property owners acted under governmental authority expressed in statutory form. In a racial covenant case the white property owners make their zoning compact under governmental authority expressed in what the majority opinion of the court below described as a "settled . . . rule of law." *Hurd v. Hodge*, 162 F. (2d) 233, 234 (1947) (R. 418, 419). Certainly, at the point of enforcement, there is no difference. In the *Harman* case, the white property owners asked the State, through its judicial arm, to enjoin the occupancy of the property in the neighborhood by Negroes. That is exactly what is done in a racial covenant case.

The prosecution in the *Marsh* case was under a general rule of law; the membership rule "endorsed, adopted and enforced" by the State in *Smith v. Allwright* was a general rule; the authority of the union to act as exclusive bargaining representative in the *Steele* case was a general rule. The rules themselves on their face were non-discriminatory. And the statute in the *Harmon* case forbidding the establishment of residence by members of one race in a community inhabited principally by members of the other race "except on the written consent of a majority of the persons of the opposite race inhabiting such community" applied to both whites and Negroes. But when these general rules were applied so that the power of government "endorsed, adopted and enforced" the racial discriminations sought to be achieved by the "private" company, the "private" political party, the "private" labor union, or the "private" white property owners, this Court struck down the governmental enforcement of the discriminations. So here, "private" zoning of communities through restrictive covenants when enforced by the judicial arm of government, becomes

governmental action which "endorses, adopts and enforces" racial discrimination in violation of the Constitution.

This is not "novel" doctrine. As early as 1883 this Court recognized in the *Civil Rights Cases*, 109 U. S. 3, 16 (1883), that the constitutional limitations apply "against State laws and proceedings, and customs having the force of law."

"... Whether the statute book of the State actually laid down any such rule of disqualification, or not, the State, through its officer, enforced such a rule: and it is against such State action, through its officers and agents, that the" [14th amendment applies]. (109 U. S. 3, 15; Consolidated Brief for Petitioners in Nos. 290 and 291, p. 20).

## II

### **RESPONDENTS' CONTENTION THAT THE PETITIONERS HAVE NO RIGHTS BECAUSE THEY KNEW OR HAD CONSTRUCTIVE NOTICE OF THE RESTRICTION IS ENTIRELY WITHOUT MERIT.**

The respondents make the following contention in their briefs (No. 72, p. 67; No. 87, pp. 3, 6, 7, 13; Nos. 290 and 291, pp. 3, 12-13, 14): The Petitioners, when the houses here involved were sold, had actual knowledge of the restrictions or had constructive notice thereof by virtue of the previous recording of the covenants, and thereby either became parties to the covenants or were estopped to challenge the judicial enforcement of the covenants as unconstitutional and illegal deprivations of their rights to acquire, own, occupy and dispose of these houses.

The respondents' contention is entirely fallacious.

Realistically, the Petitioners were not dealing in abstractions—they were concerned with physical objects: Urciolo

selling houses and lots, the grantees acquiring living space and shelter from the elements. Neither ever agreed to any restriction which would prevent Negro purchasers, solely because they were born Negroes, from acquiring and occupying the houses.

Even if these restrictions be deemed contracts between the persons who signed the instruments containing the restrictions, the covenantors had no authority to contract away the rights of *other persons* who had never given up *their* rights to own, occupy and dispose of the properties. Subsequent grantees did not become "parties" to any such discriminatory "contract" by their purchase of the land, nor did they thereby "waive" their constitutional rights.

But even if such subsequent purchasers could be deemed by virtue of actual knowledge or "constructive notice" of the restriction, either to have become "parties" to the restriction or to have assented to it, they are not estopped from challenging the validity of judicial enforcement of such discriminatory covenants. Knowledge of a restriction does not estop a person from challenging it or its enforcement against him. Even where a person knowingly violates a statutory enactment he is not precluded from making such challenge.<sup>9</sup> A mere covenant or contract is certainly of lesser dignity than a statute which is "encased in the armor wrought by prior legislative deliberation."<sup>10</sup>

This Court has uniformly refused to invoke any "estoppel" against a party to a contract who challenges the enforcement of the contract on grounds that it is against

<sup>9</sup> The sellers and buyers of the land in *Buchanan v. Warley*, 245 U. S. 60 (1917), *Harmon v. Tyler*, 273 U. S. 668 (1927), and *City of Richmond v. Deans*, 281 U. S. 704 (1930) knew of the pre-existing racial segregation statute when they entered into their land transactions. But they were not "estopped" to challenge the validity of the statute.

<sup>10</sup> *Bridges v. California*, 314 U. S. 252, 261 (1941).

public policy or contrary to law.<sup>11</sup> The public interest which is served by the challenge to the enforcement of a contract against public policy or law so greatly outweighs the interest of enforcing agreements between parties that no "estoppel" is permitted to prevent or impede the challenge, irrespective of knowledge of the agreement; and this is so even where a defendant has specifically contracted with the plaintiff that he will not challenge that very contract.<sup>12</sup> The enforcement of the covenant restrictions in the present cases on the basis of "estoppel" would result in the destruction of constitutional rights; would violate section 1978, Revised Statutes (8 U. S. C. 42), which entitles all citizens to acquire, hold and dispose of property irrespective of color; and would frustrate both the public policy against racial discrimination and the "broad public interest in freeing our competitive economy from the trade restraints"<sup>13</sup> imposed by these racial restrictions. These important considerations of constitutional rights and public policy militate against the application of any estoppel doctrine.

Nor does the recording of the restrictive covenant lend any greater sanctity to the "estoppel" contention. If anything, reliance upon the recording statutes to impute

<sup>11</sup> *Edward Katzinger Co. v. Chicago Metallic Mfg. Co.*, 329 U. S. 394 (1947); *MacGregor v. Westinghouse Electric Mfg. Co.*, 329 U. S. 402 (1947); *Sola Electric Co. v. Jefferson Electric Co.*, 317 U. S. 173, 177 (1942); *Anderson v. Carkins*, 135 U. S. 483 (1890); *Bement v. National Harrow Company*, 186 U. S. 70 (1902); *Continental Wall Paper Co. v. Voight & Sons Co.*, 212 U. S. 227 (1909); *Kennett v. Chambers*, 55 U. S. (14 How.) 38 (1852); *Hyer v. Richmond Traction Co.*, 168 U. S. 471 (1897); *Beasley v. Texas & Pacific Ry. Co.*, 191 U. S. 402 (1903); *McMullen v. Hoffman*, 174 U. S. 639 (1899); *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373 (1911); *Texas & Pac. Ry. Co. v. Marshall*, 136 U. S. 393 (1890); *Burt v. Union Central Life Ins. Co.*, 187 U. S. 362 (1902); *Sproff v. United States*, 87 U. S. (20 Wall.) 459 (1874).

<sup>12</sup> *Edward Katzinger Co. v. Chicago Metallic Mfg. Co.*, 329 U. S. 394 (1947).

<sup>13</sup> *Ibid.*, at p. 400.

constructive notice in racial restrictive covenant cases as a basis for the cancelation of the deeds and the ouster of the grantees solely because of their race plainly emphasizes how completely the enforcement of the covenant is grounded on governmental authority in order to achieve racial residential segregation.<sup>14</sup> In *Buchanan v. Warley*, 245 U. S. 60 (1917), an ordinance to achieve racial residential segregation was held unconstitutional. The application of the recording statutes to achieve the same result is equally unconstitutional.<sup>15</sup>

### III

#### **NONE OF THE OTHER PROPOSITIONS URGED AND DECISIONS CITED BY THE RESPONDENTS SUPPORT THEIR CONTENTIONS HERE.**

The respondents seek to justify the enforcement of these racial restrictive covenants by reference to the cases involving separate accommodations in transportation, schools, etc., under the so-called "separate but equal" doctrine. Those cases are entirely inapplicable here. Here there is no provision whatever for even allegedly comparable separate housing facilities for whites and non-whites. Here the thesis is complete exclusion of Negroes and colored people from the community. This Court has settled that the "separate but equal" doctrine has no application to the acquisition and use of land. *Buchanan v. Warley*, 245 U. S. 60 (1917). Land and housing are unique.

Equally inapplicable is the proposition urged by one of

<sup>14</sup> Loren Miller, "Race Restrictions on Ownership or Occupancy of Land", 7 Lawy. Guild Rev. 90, 105 (May-June, 1947).

<sup>15</sup> Cf. *Fiske v. Kansas*, 274 U. S. 380 (1927); *Thomas v. Collins*, 323 U. S. 516, 532-533 (1945); *Marsh v. Alabama*, 326 U. S. 501, 504, 509 (1946).

the *amici*<sup>16</sup> supporting the respondents (but not urged in any of the respondents' briefs) that judicial error in the rendition of a decision does not violate due process. The decrees below are not a mere judicial choice between two possible rules either of which could be selected by a legislature without violation of constitutional limitations. Here the decrees achieve the very result expressly forbidden to the legislature by the Fifth and Fourteenth Amendments and hence are an unconstitutional invasion by the judicial power into a forbidden field. Demonstrating that there is no difference between judicial and legislative violation of constitutionally protected rights, this Court, on the issue of exclusion of Negroes from jury service, decided *Ex Parte Virginia*, 100 U. S. 339, 25 L. Ed. 667 (March 1, 1880) (exclusion by a judge) and *Strauder v. West Virginia*, 100 U. S. 303, 25 L. Ed. 664 (March 1, 1880) (exclusion by statute) on the same day, and deemed both types of exclusion to be equally unconstitutional. Furthermore, none of the decisions in which the "judicial error" proposition was followed involved racial issues. Freedom from racial discrimination by governmental power is a field especially protected under our Constitution.<sup>17</sup> No court may, under the guise that its "erroneous" decision is not subject to constitutional limitations, authorize or effect either governmental imposition of racial discrimination, or the denial of constitutional rights.<sup>18</sup> Whatever may be said for the decisions holding that judicial error does not violate due process, it is now clear in the light of the more recent decisions by this Court, that judicial action is governmental action within the confines of the due process clause and may

<sup>16</sup> *National Association of Real Estate Boards*, brief in No. 72.

<sup>17</sup> *Yick Wo v. Hopkins*, 118 U. S. 356, 374 (1886); *Korematsu v. United States*, 323 U. S. 214, 216 (1944); *Hirabayashi v. United States*, 320 U. S. 81, 100 (1943); *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 203, 208 (1944); *Smith v. Texas*, 311 U. S. 128, 130 (1940).

<sup>18</sup> *Brown v. Mississippi*, 297 U. S. 278, 280, 286-287 (1936).

not accomplish "that which if done under express legislative sanction would be violative of the Constitution."

*Hovey v. Elliott*, 167 U. S. 409, 417-418 (1897); *A. F. of L. v. Swing*, 312 U. S. 321, (1941); *Prudential Insurance Company v. Cheek*, 259 U. S. 530, 547-548 (1922); *Marino v. Ragen*, — U. S. — (No. 93, Dec. 22, 1947). (See also Consolidated Brief for Petitioners, Nos. 290 and 291, pp. 20-28, 38-39.) In the *Hovey* and *A. F. of L.* cases, a judicial decision was held *to violate due process* because a statute achieving the same result would have been equally unconstitutional. In the *Prudential Insurance* case, a judicial decision was held *not to violate due process* because a statute achieving the same result would have been constitutional. In all three cases, the standard for testing the constitutionality of the judicial decision under the due process clause was whether a statute achieving the same result would be constitutional.<sup>19</sup>

The respondents say that if the racially discriminatory covenant is not enforceable in the courts, then "the respondents certainly would be deprived of their property without due process of law." (Respondents' Brief in Nos. 290 and 291, pp. 13, 9-10; Respondents' Brief in No.

<sup>19</sup> The respondents' quotation from *United States v. Dunnington*, 146 U. S. 338, 351 (1892) for the proposition that federal courts are not agencies of the Federal Government was only *dictum*—the issue was whether a suit against the United States could be maintained in the Court of Claims for the value of condemned land where the United States had paid the appraised value into court as required by statute but the true owner had not received the money, and the Court expressly stated that the question whether the court's clerk erred in paying the money to others was not involved (146 U. S. 338, 353). The respondents' quotation from *Anderson National Bank v. Lockett*, 321 U. S. 233, 246 (1944), for the proposition that due process means only notice and an opportunity to be heard is lifted out of context since the issue was whether a particular form of notice met the requirements of due process. The respondents' quotation from *Railway Mail Association v. Corsi*, 326 U. S. 88, 94 (1945), for the proposition that "the prohibitions of the Fourteenth Amendment are addressed to legislative action" does not prove that the Amendment is inapplicable to judicial action since that case involved the validity of a statute.

87, pp. 9-12). But no one is seeking to oust the respondents from their homes or to cancel their deeds, or to interfere in any way with their use and enjoyment of their own property. If the respondents mean that they have a "property right" to call on the Government to prevent owners of other land from willingly selling it to Negroes or colored people, their argument is "a distortion of the policy manifested in" the Due Process Clause which was adopted to prevent, not to require, governmental discrimination on the basis of race. *Railway Mail Association v. Corsi*, 326 U. S. 88, 94 (1945). The respondents cannot, under any guise of "contract," require the government to enforce racial discrimination in violation of the constitutional rights of others. Nor is the respondents' alleged "property right" the kind of "property right" in lands of other people which the courts should recognize or enforce. *Beasley v. Texas & Pacific R. Co.*, 191 U. S. 492, 496-497 (1903); *Norcross v. James*, 140 Mass. 188, 191-193, 2 N. E. 946, 948-949 (1885). Furthermore, if the respondents had purchased their property in reliance on a zoning statute they would not be immune from changes in such zoning, nor are they immune from any judicial refusal to enforce this covenant zoning which is based solely on racial discrimination. And to the respondents' plaintive question: "where except in the courts may contracts be peacefully enforced?", the short answer is that there are many contracts which courts do not enforce even though the making of the contracts may not have been unlawful. *E.g.*, Anson on Contracts, sec. 272 (Patterson ed., 1939); Williston on Contracts, vol. V, sec. 1630 (Rev. ed., 1937); vol. VI, secs. 1722, 1725, 1744a (Rev. ed., 1938).

The respondents, in contending that the enforcement of racial restrictive covenants is not contrary to public policy, entirely ignore the effects of racial restrictive covenants on the housing, health, morals, and welfare of Negroes and

of the entire community. The respondents, apparently, view "public policy" as meaning only *their* policy.

The respondents cite *Cowell v. Springs Co.*, 100 U. S. 55 (1879) in support of their contention that racial restrictive covenants are not undue restraints on alienation. That case involved a restraint on use, not a restraint on alienation or occupancy, and in no way involved race. Restraints on use stand on entirely different bases than restraints on occupancy by people. See Consolidated Brief for Petitioners in Nos. 290 and 291, pp. 127-131. Furthermore, the Court's statement that it is permissible to prohibit "alienation to particular persons" was only a *dictum* in that case. But, even more important, the *Cowell dictum* referred only to "particular persons" (100 U. S. 55, 57), not to "20,000,000 Americans of minority groups" or to "any racial or religious group against whom prejudice is directed."

The respondents' brief fails utterly to show any basis, other than the perpetuation of their racial prejudice, for the continued enforcement of racial restrictive covenants, or to demonstrate that any one of the grounds urged by the Petitioners against such continued enforcement is in any way unsound.

#### IV

### **FURTHER EXPRESSIONS OF THE POLICY OF THE UNITED STATES AGAINST RACIAL DISCRIMINATION.**

Subsequent to the filing in November 1947 of the Petitioners' briefs in these cases, there have been several further noteworthy expressions of the plain policy of the United States to protect, guarantee and promote fundamental civil rights and freedom from racial discrimination, both nationally and internationally.

(a) *United Nations Commission on Human Rights.* The function of the United Nations Commission on Human

Rights is to implement the Charter of the United Nations which obligates the member nations to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race . . ." Articles 55(c), 56 (59 Stat. 1031, 1045-1046). The Second Session of the Commission was held at Geneva, Switzerland, from December 2 to 17, 1947. On December 1, 1947, the United States Department of State announced the text of the international Declaration of Human Rights which the United States would propose for adoption by the United Nations Commission on Human Rights.<sup>20</sup> The following provisions are particularly pertinent to these cases:

"Article I. Every one is entitled to life, liberty, and equal protection under law.

"Article III. No one shall be subjected to unreasonable interference with his . . . family, home . . . No one shall be arbitrarily deprived of his property.

"Article IX. Every one has the right to a decent living . . . to health . . . There shall be equal opportunity for all to participate in the economic and cultural life of the community.

"Article X. Everyone, everywhere in the world, is entitled to the human rights and fundamental freedoms set forth in this declaration without distinction as to race, sex, language, or religion. . . ."

On December 17, 1947, under the Chairmanship of the United States Representative, the United Nations Commission on Human Rights adopted a Declaration and a

<sup>20</sup> For text of the United States Proposal for the Declaration of Human Rights by the General Assembly of the United Nations, see *The Evening Star*, Washington, D. C., p. A-7 (December 1, 1947). The United States has been the leader in the international formulation of the basic human rights. See *Summary Review of the Conference on the Proposed International Declaration on Human Rights held at the Department of State, Washington, D. C. on October 31, 1947* (issued by Division of Public Liaison, U. S. Dept. of State, on November 25, 1947).

Convention on Human Rights which will eventually be submitted to the General Assembly of the United Nations for adoption, and, when ratified by two-thirds of the Members of the United Nations, will become binding between them.<sup>21</sup> In addition, the Commission adopted a Resolution that specific clauses to protect minority rights and human freedoms should be inserted in all future peace treaties.<sup>22</sup> The following provisions of the Commission's Declaration on Human Rights are particularly pertinent to these cases:

"Article 1. All men are born free and equal in dignity and rights. . . .

"Article 3. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race. . . . All are equal before the law regardless of office or status and entitled to equal protection of the law against any arbitrary discrimination. . . .

"Article 7. Everyone has the right to life, to liberty and security of person.

"Article 12. Everyone shall be entitled to protection under law from unreasonable interference with . . . his family. His home . . . shall be inviolable.

"Article 13. Subject to any general law not contrary to the purposes and principles of the United Nations Charter . . . there shall be liberty of movement and

<sup>21</sup> For the text of the Declaration and Convention on Human Rights adopted by the United Nations Commission on Human Rights, see Press Release SOC/307 (17 December 1947) issued by the United Nations Department of Public Information, Press and Publications Bureau, Lake Success, N. Y. These proposed formulations of an International Bill of Rights were not hastily conceived—they were preceded by comprehensive and documented studies, with suggestions and drafts from almost every nation in the world and from numerous private organizations and individuals. Illustrative is the 408 page compilation: United Nations Economic and Social Council (E/CN4/AC1/3 Add. 1—2 June 1947), Commission on Human Rights Drafting Committee, International Bill of Rights, Documented Outline.

<sup>22</sup> Press Release SOC/310 (19 December 1947) issued by United Nations Dept. of Public Information, *supra*,

free choice of residence within the borders of each state. . . .

"Article 17. Everyone has the right to own property in conformity with the laws of the state in which such property is located. No one shall be arbitrarily deprived of his property.

"Article 33. Everyone . . . has the right to the preservation of his health through the highest standards of . . . housing . . . which the resources of the state and community can provide. . . .

It is significant that provisions against racial discrimination are in the Constitutions of most of the countries of the world. See the mimeographed Memorandum of 20 October 1947 (E/CN.4/Sub.2/4) by the Division of Human Rights of the United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (copies of which have been filed with the Clerk of this Court), quoting provisions of national constitutions of countries throughout the world concerning prevention of discrimination and protection of minorities.

The important effects of racial discrimination on the position of the United States in its international relations is strikingly illustrated by the recent refusal of the Republic of Panama to lease to the United States 13 military bases in Panama, largely because of racial discrimination practiced against Panamanians. *The Washington Post*, December 24, 1947, pp. 1 and 2; December 28, 1947, Editorial Section, pp. 1B and 6B.

(b) *The President's Commission on Higher Education*. On December 11, 1947, the President's Commission on Higher Education, in its comprehensive Report, *Higher Education for American Democracy*, vigorously condemned

racial and religious discrimination in education.<sup>23</sup> The President's Commission demonstrated that racial segregation in schools deprived Negroes of equal educational opportunities and reduced the quality of education for whites as well. The President's Commission urged that: "6. The time has come to make public education at all levels equally accessible to all, without regard to race, creed, sex or national origin" by renouncing "the practices of discrimination and segregation in educational institutions as contrary to the spirit of democracy." *Report of President's Commission*, etc., vol. I, p. 38. Especially pertinent to these cases is the Commission's finding that even "in States in which segregation [in schools] is not legalized", residential segregation produces "neighborhoods, which are frequently characterized by poorer school buildings, less equipment and less able teachers." *Report of President's Commission*, etc., vol I, p. 34; see also vol. II, p. 31.

(c) *President Truman's State-of-the-Union Message to Congress (January 7, 1948)*. Appearing personally before Congress, President Truman just a few days ago stated to Congress, in his annual State-of-the-Union Message of January 7, 1948:<sup>24</sup>

"Our first goal is to secure fully the essential human rights of our citizens.

"The United States has always had a deep concern for human rights. . . . Any denial of human rights is a denial of the basic beliefs of democracy and of our regard for the worth of each individual.

"Today, however, some of our citizens are still denied equal opportunity for education, for jobs and

<sup>23</sup> Report of the President's Commission on Higher Education, *Higher Education for American Democracy*—Vol. I, "Establishing the Goals," pp. 27, 32-36, 38-39; Vol. II, "Equalizing and Expanding Individual Opportunity", pp. 25-36 (Govt. Printing Office, December 1947).

<sup>24</sup> *The Evening Star*, Washington, D. C., p. A-6 (January 7, 1948).

economic advancement, and for the expression of their views at the polls. Most serious of all, some are denied equal protection under our laws. Whether discrimination is based on race, or creed, or color, or land of origin, it is utterly contrary to American ideals of democracy.

"The recent report of the President's Committee on Civil Rights points the way to corrective action by the Federal Government and by State and local governments. Because of the need for effective Federal action, I shall send a special message to the Congress on this important subject.

"... the youth of our Nation are handicapped when millions of them live in city slums and country shacks ... we must see that every American family has a decent home." ...<sup>25</sup>

"Above all else, we are striving to achieve a concord among the peoples of the world based upon the dignity of the individual and the brotherhood of man. . . .

"This is a time to remind ourselves of these fundamentals. For today the whole world looks to us for leadership."

## V

### RACISM AND WORLD WAR II.

Wars involving conflicts of ideology necessarily change the relations and thinking of mankind. From the 1861-65 holocaust of Civil War between the North and the South, involving the issue of slavery, came the 13th, 14th and 15th

<sup>25</sup> President Truman has recently repeatedly stressed the pressing need "to provide decent housing for ... minority groups" (Message to the 14th Annual Convention of the National Association of Housing Officials meeting on November 17, 1947; *The Evening Star*, Washington, D. C., p. A-2, Nov. 17, 1947) and the right of every citizen to secure a decent home without discrimination because of race (Address at 38th Annual Conference of the National Association for the Advancement of Colored People on June 29, 1947; 93 Cong. Rec. A-3505, July 2, 1947; *The Washington Post*, p. 4, June 30, 1947).

Amendments to the Constitution to eliminate slavery and elevate the former slaves to citizenship and equality before the law. In the bloodier World War II one of the fundamental issues was racism. That War, and the threat of atomic weapons, guided missiles and other improved techniques of mass death, have brought the realization that racism and other catalysts for war must be eradicated from the world if civilization is to survive. The Axis nations with their racist philosophies were vanquished in World War II. From the lessons of that struggle have come the human rights policies of the United Nations Charter, the Declaration and Convention on Human Rights adopted by the United Nations Commission on Human Rights to implement those policies, the soul-searching Report of the President's Committee on Civil Rights, the Report of the President's Commission on Higher Education, and the national and world-wide emphasis on elimination of racial and religious discriminations as possible catalysts for future wars.

The judicial enforcement of racial restrictive covenants is plainly incompatible with the ideological thrust of World War II and the national and international policy against racism, and should no longer be countenanced in this country.

### CONCLUSION

It is respectfully requested that this Court, for the reasons urged in our Consolidated Brief and in this Consolidated Reply Brief, reverse the judgments of the court below.

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PHINEAS INDRITZ,

SPOTTSWOOD W. ROBINSON, III,

*Attorneys for Petitioners.*

January 13, 1948, Washington, D. C.



**APPENDIX**

- Chart 1—Increase in Number of Race Restrictive Housing Covenants, Chicago and St. Louis, 1910-1945 29
- Chart 2—Increase in Negro Population Compared With Increase in Race Restrictive Housing Covenants, Chicago and St. Louis, 1910-1940 31
- Chart 3—Increase in Neighborhood Improvement Associations Compared With Increase in Race Restrictive Housing Covenants, Chicago, Illinois, 1890-1945 33

## APPENDIX

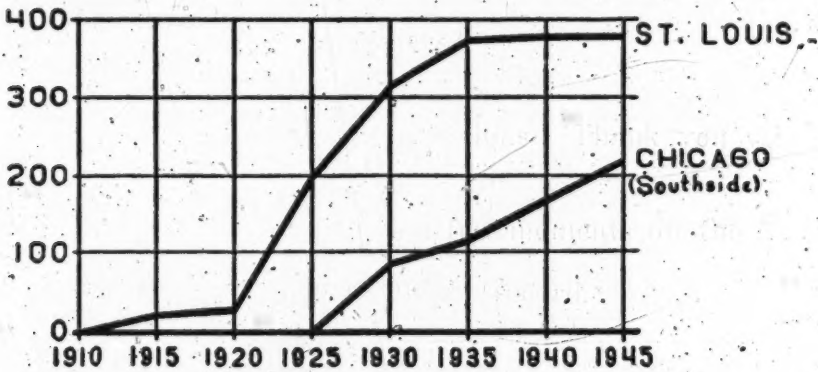
Part 1—Increase in Number of Race Restrictive  
Housing Covenants, Chicago and St.  
Louis, 1910-1945

Part 2—Increase in Negro Population Compared  
With Increase in Race Restrictive Hous-  
ing Covenants, Chicago and St. Louis,  
1920-1940

Part 3—Increase in Neighborhood Improvement As-  
sociations Compared With Increase in  
Race Restrictive Housing Covenants,  
Chicago, Illinois, 1920-1945

CHART 1

# INCREASE IN NUMBER OF RACE RESTRICTIVE HOUSING COVENANTS, CHICAGO AND ST. LOUIS, 1910-1945



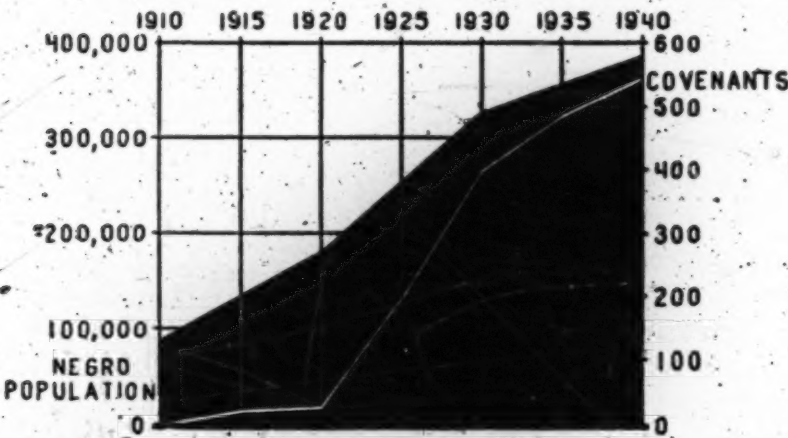
from Herman H. Long and Charles S. Johnson, *People vs. Property: Race Restrictive Covenants in Housing* (Fisk University Press, 1947), p. 13

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80

CHART 2

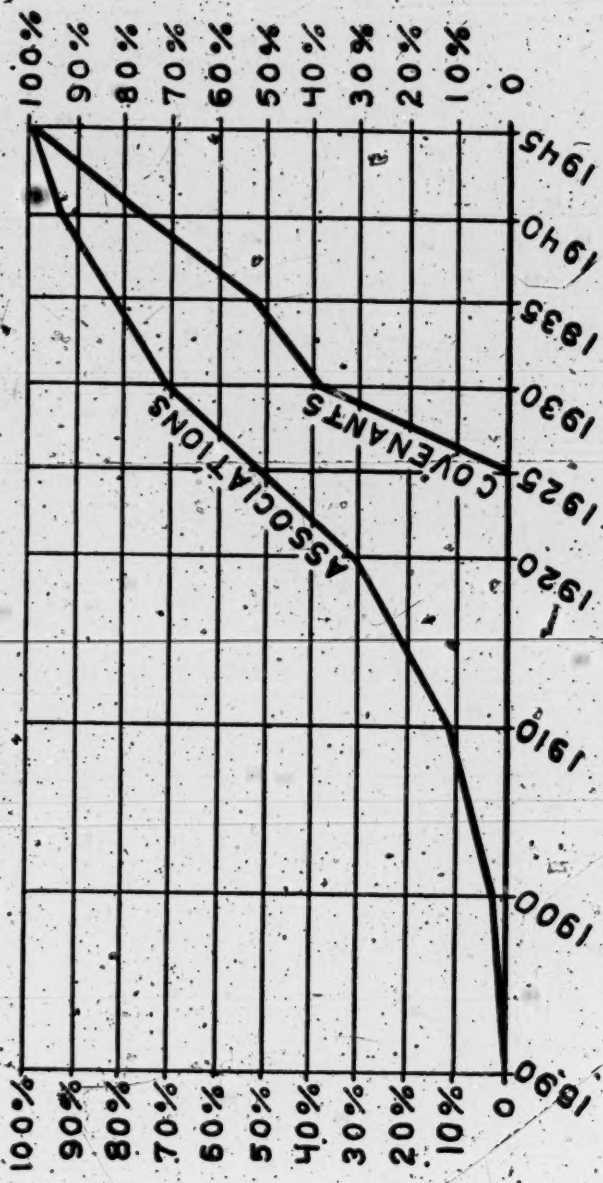
INCREASE IN NEGRO POPULATION  
COMPARED WITH INCREASE IN RACE  
RESTRICTIVE HOUSING COVENANTS,  
CHICAGO AND ST. LOUIS, 1910-1940



from Herman H. Long and Charles S. Johnson, *People vs. Property: Race Restrictive Covenants in Housing* (Fisk University Press, 1947), p. 15

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INCREASE IN NEIGHBORHOOD IMPROVEMENT ASSOCIATIONS  
COMPARED WITH  
INCREASE IN RACE RESTRICTIVE HOUSING COVENANTS  
CHICAGO, ILLINOIS, 1890-1945



from Herman H. Long and Charles S. Johnson, *People vs. Property: Race Restrictive Covenants in Housing*. (Fisk University Press, 1947).

p. 43

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# Supreme Court of the United States

OCTOBER TERM, 1947

NO. 290

JAMES M. HURD, AND MARY I. HURD,

*Petitioners,*

*vs.*

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PAS-  
QUALE DERITA, VICTORIA DERITA, CONSTANTINO  
MARCHEGIANI, MARY M. MARCHEGIANI, BALDUINO  
GIANCOLA AND MARGARET GIANCOLA, *Respondents.*

NO. 291

RAPHAEL G. URCILOLO, ROBERT H. ROWE, ISABELLE J.  
ROWE, HERBERT B. SAVAGE, GEORGIA N. SAVAGE,  
AND PAULINE B. STEWART, *Petitioners,*

*vs.*

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PAS-  
QUALE DERITA, VICTORIA DERITA, CONSTANTINO  
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## BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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# INDEX.

	Page
STATEMENT OF THE CASE .....	1
ARGUMENT .....	
I. No Constitutional or Other Federal Question of Substance is Involved .....	3
II. No Question of Large Public Concern is Involved .....	4
a. The Covenant is Not Against the Public Policy of the District of Columbia .....	4
b. The Covenant Does Not Constitute an Unlawful Restraint on Alienation .....	6
III. Action in the Courts is Proper and Essential for Law-Abiding Citizens to Obtain Equal Protection of the Laws .....	6
IV. The Decision of the Court Below is Correct and in Accord With the Decisions of This Court ..	8
Conclusion .....	9

## TABLE OF CASES.

Bryan v. Grosse, 155 Cal. 132, 99 P. 499 .....	7
Buchanan v. Wahey, 245 U. S. 60 .....	6
Codman v. Bradley, 201 Mass. 561, 87 N. E. 591 .....	7
Corrigan v. Buckley, 271 U. S. 323, 70 L. ed. 969; 55 App. D. C. 30, 299 Fed. 899 .....	3, 4, 7, 8, 9
Cornish v. O'Donoghue, 58 App. D. C. 359; 30 Fed. (2d) 983, cert. denied 279 U. S. 871 .....	8
Cowell v. Colorado Springs Co., 100 U. S. 55, 25 L. ed. 547 .....	6
Grady v. Garland, 67 App. D. C. 73, 89 Fed. (2d) 817, cert. denied 302 U. S. 694 .....	8
Hartford Fire Ins. Co. v. Chicago, etc. Ry., 175 U. S. 91, 100 .....	5
Hundley v. Gorewitz, 77 App. D. C. 48, 132 Fed. (2d) 23 .....	7, 8
Mays v. Burgess, 79 App. D. C. 347, 147 F. (2d) 869 cert. denied 325 U. S. 868, 89 L. ed. 1987 .....	5, 7, 8, 9
Mays v. Burgess, 80 App. D. C. 238, 152 F. (2d) 123 .....	2
Potter v. Couch, 141 U. S. 296, 315 .....	6
Russell v. Wallace, 58 App. D. C. 357, 30 Fed. (2d) 981, cert. denied 279 U. S. 871 .....	8
Torrey v. Wolfes, 56 App. D. C. 4, 6 Fed. (2d) 702 .....	8

## STATUTES.

Judicial Code, Section 240 (28 U. S. C. Sec. 347e) .....	5
U. S. Code, Title 8, Section 42 .....	3

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GIANCOLA AND MARGARET GIANCOLA, *Respondents.*

## BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

### STATEMENT OF THE CASE.

Respondents deem the following statement, supplement-  
ing that contained in Petitioners' brief, essential to place  
the facts fully before the Court.

Petitioner Urciolo, a real estate speculator, sold and con-  
veyed premises 126 and 144 Bryant Street, N. W., to  
Negroes *after* the issuance of the Injunction, which includes  
these properties in its provisions, and in violation thereof  
(R. 451, 452).

2

The 100 block of Bryant Street, Northwest, had not changed as to ownership or occupancy for 20 years. The twenty properties adjoining First Street were all under the deed covenant (R. 380), and were part of a large White territory running from the Soldiers Home to T Street, between First Street, N. W., and Lincoln Road (R. 72), "consisting of approximately 1000 homes, churches and business properties, exclusively occupied by persons of the White race, under similar agreements or deed covenants." (*Mays v. Burgess, et al.*, 80 App. D. C. 238, 152 F. (2d) 123.) The remaining eleven properties were under no covenant and had been owned and occupied by Negroes for 20 years (R. 381).

The north side of Bryant Street is the southern boundary of McMillan Park Reservoir; immediately west of the 100 block of Bryant Street is the District of Columbia Pumping Station and a garage on the north side of the street, and a Water Department stock yard and garage on the south side. No change or trend as to Negro ownership and occupancy is possible except in the deed covenanted properties. (R. 23.)

Petitioners make numerous references to cases arising under municipal ordinances, state legislation, opinions of courts in ministerial roles, national treaties, citing also the Charter of the United Nations, a presidential statement and the dissenting opinion in the instant case, (based largely on the sociological views of the dissenting Justice)—none of which are pertinent to the legal questions in the pending cases, which arise solely under the private actions of individual citizens in relation to their private property. We shall therefore emphasize only those points which are controlling in urging the denial of the Writ of Certiorari in these cases.

# **I. No Constitutional or Other Federal Question of Substance is Involved.**

No question of substance relating to the construction or application of the Constitution or statutes of the United States is involved in this case.

In *Corrigan v. Buckley*, 271 U. S. 323, 50 L. ed. 969 (55 App. D. C. 30, 299 F. 899), this Court had presented to it at length both the presumed questions of constitutional and statutory construction and the question of general law involved in a similar Negro covenant case, and dismissed the appeal on the ground that no questions were involved under the Fifth, Thirteenth and Fourteenth Amendments to the Constitution, and that the construction of Sections 1977, 1978 and 1979, Revised Statutes of the United States, was not drawn in question. No action of any public authority subject to constitutional or statutory prohibitions is in any way involved in this case. This Court there said:

"It is obvious that none of these Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color whatever for the contention that they rendered the indenture void. And, plainly, the claim urged in this Court that they were to be looked to, in connection with the provisions of the Revised Statutes and the decisions of the courts, in determining the contention, earnestly pressed, that the indenture is void as being 'against public policy,' does not involve a constitutional question within the meaning of the Code provision."

The suggestion made in petitioners' brief (pp. 12 and 25) that there is a question involving the construction of a Federal statute, to wit: section 42, Title 8 of the United States Code (formerly Section 1978 of the Revised Statutes) is entirely without support in the record. This question has not been raised or suggested in the courts below and there is no action of any public authority subject to the terms of the statute in any way depriving petitioners of their right to purchase, sell, and hold real and personal property. The

4  
limitation which excluded petitioners, as the Court below held, from holding and occupying certain pieces of property in the District of Columbia, was entirely a matter of private contract between adjoining and neighboring land owners.

With reference to a similar contention in *Corrigan v. Buckley*, (*supra*) this Court said:

"Assuming that this contention drew in question the 'construction' of these statutes, as distinguished from their 'application,' it is obvious upon their face that while they provide, *inter alia*, that all persons and citizens shall have the equal right with white citizens to make contracts and acquire property, they, like the Constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property. There is no color for the contention that they rendered the indenture void; nor was it claimed in this Court that they had, in and of themselves, any such effect."

## **II. No Question of Large Public Concern is Involved.**

Petitioners apparently contend in their brief that the question of whether this covenant is void because contrary to the public policy of the District of Columbia is a question of large public concern which has not been, but which should be decided by this Court, under correct principles of equity jurisprudence.

### **(a) THE COVENANT IS NOT AGAINST THE PUBLIC POLICY OF THE DISTRICT OF COLUMBIA.**

The question of whether these deed covenants affected certain pieces of real estate located in the District of Columbia and were enforceable by injunction against persons owning and occupying said land in violation of the covenants is one of local law, and the only public policy involved is that of the District of Columbia. A decision on the question cannot have any effect on the law of real property which

may be located in other states or jurisdictions. While there is no substantial diversity in the various states, each state court has treated the question as one of the local law of real property, to be governed by its own principles. *There are no conflicting Federal decisions on the question, and it arises in the U. S. Court of Appeals for the District of Columbia only through the local jurisdiction of that court and not as involving any Federal right.* The public policy of the District of Columbia, like that of any state affecting such questions, is that fixed by applicable statutes and declared by the highest court of the jurisdiction. What its public policy is and what does or does not conflict with it, cannot be a question of general importance. See *Hartford Fire Ins. Co. v. Chicago, etc. Ry.*, 175 U. S. 91, 100.

The Court of Appeals of the District of Columbia is the highest court of an important and thickly populated territorial subdivision of the United States. Congress through the Judicial Code, Section 240 (28 U. S. Code Sec. 347 c) has seen fit to make its judgments final and not reviewable by writ of error or appeal, but only by certiorari, thus making its decisions on questions of local law, such as are involved in this case, equivalent to similar decisions of the highest courts of the states.

Respondents respectfully call the Court's attention to the following excerpt from the decision of the Court of Appeals in the case of *Mays v. Burgess, et al.*, 79 App. D. C., P. 347-8; (cert. denied 325 U. S. 868, 89 L. ed. 1987, involving a similar Restriction:

"Little need now be said on the subject of that (public) policy. The proposition is not new and was unsuccessfully urged in the Corrigan case, *supra*, in this court and in the Supreme Court. And nothing is suggested now that was not considered then. The Constitution is the same now as then, and we are cited to no new public laws, nor indeed to any other course or practice of Government officials, which the private action of the original owners of the block in question contravenes. And the public policy of a State of which courts take notice and to which they give effect must be deduced—in the main—from these sources.

*Surely it may not—properly—be found in our personal views on sociological problems. As to the District of Columbia, we must take judicial notice of the fact that separate schools are established for the white and colored races; separate churches are universal and are approved by both races; and that in the present local housing emergency, large amounts of public and, perhaps also, of private funds have been expended in the establishment of homes for the separate use of white and colored persons. And these accepted practices are not intended to and should not be considered to imply the inferiority of either race to the other.* (Italics supplied.)

**(b) THE INDENTURE DOES NOT CONSTITUTE AN UNLAWFUL RESTRAINT ON ALIENATION.**

Petitioners in their brief seem to lay no stress on the contention that the covenant constitutes an unlawful restraint on alienation. Respondents therefore merely call attention to the opinion of Mr. Justice Fields in *Cowell v. Colorado Springs Co.*, 100 U. S. 55, 25 L. Ed. 547, sustained in *Potter v. Couch*, 141 U. S. 296, 315, and cited in all cases on this subject; the deed covenant here involved, and similar restrictive agreement covenants, do not constitute an unlawful or undue restraint on alienation.

**III. Action in the Courts is Proper and Essential for Law-Abiding Citizens to Obtain Equal Protection of the Laws.**

Petitioners urge that the courts cannot enforce such deed covenants or restrictive agreements, because the Judiciary is a branch of the Government, and cite in support of the proposition the case of *Buchanan v. Warley*, 245 U. S. 60, a Kentucky case. There appears to be no need to do more than quote the portion of the opinion conceded by petitioners to state the issue, and observe that reliance on this case makes it obvious that appellants have "misconceived the real question here involved".

"The concrete question here is: May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, *be inhibited by the State, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?*" (Italics supplied.)

The contention is not new. In 1924 this proposition was urged in the *Corrigan-Buckley* case, (*supra*), in 1942 the appellants in *Hundley v. Gorewitz* (77 App. D. C. 48), and in 1944 the appellants in *Mays v. Burgess* (79 App. D. C. 343) made the same contention, and again in the instant case, before the Court of Appeals. Although urged strongly in each case, the point was ignored by the Court.

While it may be argued that courts will not recognize or enforce contracts against public policy, in the absence of such objection the courts are the only place where law abiding citizens may obtain equal protection of the laws and save themselves from being deprived of their property without due process of law. This is exactly what the respondents here did when they filed this suit to enforce their contract. We quote from the opinion of the Court of Appeals in *Mays v. Burgess* (*supra*):

"In the case we have the parties, as they declared, contracted for their mutual benefit and in the interests of the neighborhood not to permit their land to be sold to, or used by, persons of the Negro race, and made this covenant binding upon their heirs and assigns. The form of the covenant is immaterial and it is not necessary it should run with the land. 'A personal covenant or agreement will be held valid and binding in equity on a purchaser taking the estate with notice. It is not binding upon him merely because he stands as an assignee of the party who makes the agreement, but because he has taken the estate with notice of a valid agreement concerning it which he cannot equitably refuse to perform.' *Bryan v. Grosse*, 155 Cal. 132, 99 P. 499. And likewise in *Codman v. Bradley*, 201 Mass. 561, 87 N. E. 591, it was said:

"It is plain from the language of the indenture that the parties intended a restriction upon each of

the five lots in favor of the owners of lots 176 and 177, and their heirs and assigns, which should be for the benefit of the lots, whoever might be the owners of them. It is equally plain that equity will enforce such a restriction. It is not important to determine whether the instrument created a legal estate in the five lots, or precisely what legal estate is created, if any. It created a right enforceable in equity against all persons taking with notice of it, actual or constructive, and this equitable right is in the nature of an easement, even if it rests on no broader principle than that equity will enforce a proper contract concerning land, against all persons taking with notice of it. [Citing cases.] In the present case it plainly appears that the intention of the parties was that their respective promises should be for the benefit of the promisees as owners of the neighboring land, and of subsequent owners of these lots. Such a promise may always be enforced in equity by an owner."

#### IV. The Decision of the Court Below is Correct and in Accord with the Decisions of this Court.

In conclusion we quote from the opinion of the Court of Appeals in the pending case:

"The validity of the restrictive deed covenant before us now has been upheld by this Court on numerous occasions. *Torrey v. Wolfes*, 56 App. D. C. 4, 6 F. (2d) 702; *Cornish v. O'Donoghue*, 58 App. D. C. 359, 30 F. (2d) 983, cert. denied, 279 U. S. 871; *Grady v. Garland*, 67 App. D. C. 73, 89 F. (2d) 817, cert. denied, 302 U. S. 694; *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. (2d) 23, wherein we said: 'In view of the consistent adjudications in similar cases, it must now be conceded that the settled law in this jurisdiction is that such covenants as this are valid and enforceable in equity by way of injunction.'

"Similarly, restrictive covenants expressed in agreements between the owners of land have been upheld by this Court in the following cases: *Corrigan v. Buckley*, 55 App. D. C. 30, 299 Fed. 899, appeal dismissed 271 U. S. 323; *Russell v. Wallace*, 58 App. D. C. 357, 30 F. (2d) 981, cert. denied, 279 U. S. 871; *Mays v. Burgess*,

79 U. S. App. D. C. 343, 147 F. (2d) 869, cert. denied, 325 U. S. 868, rehearing denied 325 U. S. 896.

"The appellants here have presented no contention that is not answered by those decisions."

The decision of the U. S. Court of Appeals for the District of Columbia not only agrees with the settled rule of property in this District, established by many prior decisions, but is in agreement with the settled principles of law applicable which have been recognized from the time of Lord Coke to the present. The decision below agrees exactly with the cases in this Court, above cited, which have dealt with this question. Four times this Court has denied Certiorari, since its decision in *Corrigan v. Buckley* (*supra*), when Petitions involving the identical or similar restrictive covenants have been sought.

### CONCLUSION.

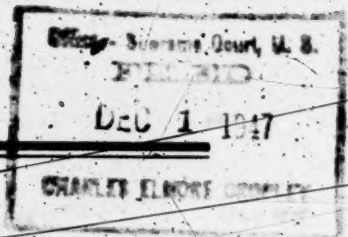
For the foregoing reasons it is respectfully submitted that the petition for certiorari should be denied.

HENRY GILLIGAN,

JAMES A. CROOKS,

*Attorneys for Respondents.*

FILE COPY



# Supreme Court of the United States

OCTOBER TERM, 1947

NO. 290

JAMES M. HURD AND MARY I. HURD,  
*Petitioners,*

vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PAS-  
QUALE DERITA, VICTORIA DERITA, CONSTANTINO  
MARCHEGIANI, MARY M. MARCHEGIANI, BALDUINO  
GIANCOLA AND MARGARET GIANCOLA, *Respondents.*

NO. 291

RAPHAEL G. URCILOLO, ROBERT H. ROWE, ISABELLE J.  
ROWE, HERBERT B. SAVAGE, GEORGIA N. SAVAGE  
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## CONSOLIDATED BRIEF FOR RESPONDENTS.

HENRY GILLIGAN,  
JAMES A. CROOKS,  
*Attorneys for Respondents.*

December 1, 1947.

## INDEX.

	Page
STATEMENT OF THE CASE .....	1
SUMMARY OF THE ARGUMENT .....	4
<b>ARGUMENT</b>	
1. The injunctive relief granted by the District Court is not contrary to the Federal Constitution or implementing legislation .....	4
(a) The Fifth and Fourteenth Amendments do not invalidate the restriction .....	4
(b) The Fifth and Fourteenth Amendments do not prohibit judicial enforcement of the restriction .....	9
(c) The Civil Rights Acts (Sections, 1977, 1978 and 1979, Revised Statutes) cannot prohibit judicial enforcement of the restriction .....	17
2. Restrictive covenants are not contrary to the public policy of the District of Columbia .....	18
3. Restrictive covenants are not an undue restraint on the power of alienation or repugnant to other rules of property .....	24
CONCLUSION .....	

## TABLE OF CASES.

Allgeyer v. Louisiana, 165 U. S. 578 .....	7
Anderson National Bank v. Lockett, 321 U. S. 233 .....	14
Buchanan v. Warley, (1917) 245 U. S. 60 .....	5, 9, 12, 13, 17
Burkhardt v. Lofton, (1944) 63 Cal. App. 2d 230, 146 P. 2d 720 .....	7, 14, 21
Castleman v. Avignone, 56 App. D. C. 253, 12 F. (2d) 326 .....	25
Chandler v. Zeigler, (1930) 88 Colo. 1, 291 P. 822 .....	7
City of Richmond v. Deans, 281 U. S. 704 .....	5, 12
Cohens v. Virginia, 6 Wheat. 264 .....	11
Cornish v. O'Donoghue. (1929) 58 App. D. C. 359, 30 F. (2d) 983; cert. denied 279 U. S. 871 .....	8, 22, 24
Corrigan v. Buckley, (1926) 271 U. S. 323 .....	8, 15, 16, 17
Corrigan v. Buckley, (1924) 55 App. D. C. 30, 299 F. 899 .....	8, 15, 18, 21
Cowell v. Colorado Springs Co., 100 U. S. 55 .....	24

	Page
Davidson v. New Orleans, 96 U. S. 97 .....	14
Dooley v. Savannah Bank and Trust Co., (1945) — Ga. —, 34 S. E. 2d, 522 .....	7
Georgia v. Stanton, 6 Wall. 50 .....	10, 11, 20
Grady v. Garland, (1937) 67 App. D. C. 75, 89 F. (2d) 817, cert. denied 302 U. S. 694 .....	8, 22, 24
Harmon v. Tyler, 273 U. S. 668 .....	5, 12
Hartford Fire Ins. Co. v. Chicago M. & St. P. R. Co. (C. C. A. 8th) 70 F. 201, Affirmed 175 U. S. 91 .....	21
Heiner v. Donnan, 285 U. S. 312, 326 .....	6
Hemsley v. Hough, (1945) — Okla. —, 156 P. 2d 182 .....	7
Hemsley v. Sage, (1944) 194 Okla. 669, 154 P. 2d 577 .....	7
Highland v. Russell Car & Plow Co., 279 U. S. 253 .....	7
Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398 .....	7
Hundley v. Gorewitz, (1942) 77 U. S. App. D. C. 48, 132 F. 2d 23 .....	8, 22, 24
In Re Virginia, 100 U. S. 313 .....	6
Lane v. Watts, 234 U. S. 525 .....	11
Langdon v. Conlin, 67 Neb. 243, 93 N. W. 389 .....	19
Lion's Head Lake v. Brezezinski, (1945) 23 N. J. Mis. R. 290, 43 A. 2d 729 .....	7
Los Angeles Investment Co. v. Gary, (1919) 181 Cal. 680, 186 P. 596 .....	7
Marbury v. Madison, 1 Cranch 137 .....	10
Mays v. Burgess, 79 U. S. App. D. C. 343, 147 F. (2d) 869, cert. denied 325 U. S. 868 .....	8, 12, 22, 23, 25
McCowen v. Pew, 153 Cal. 735, 96 P. 893 .....	19
Meade v. Dennistone, (1938) 173 Md. 295, 196 A. 330 .....	7, 12
Morgan v. Virginia, 328 U. S. 373 .....	12
Nebbie v. New York, (1934) 291 U. S. 502 .....	9
Parmalee v. Morris, (1922) 218 Mich. 625, 188 N. W. 330 .....	7
Plessy v. Ferguson, 163 U. S. 537 .....	6, 19
Porter v. Barrett, (1925) 233 Mich. 373, 206 N. W. 532 .....	7
Queensborough Land Co. v. Cazeaux, 136 La. 724, 67 So. 641 .....	7
Railroad Mail Assoc. v. Corsi, 326 U. S. 88 .....	6
Ridgeway v. Cockburn, (1937) 296 N. Y. Supp. 936 .....	7
Russell v. Walker, (1929) 58 App. D. C. 357, 30 F. (2d) 981, cert. denied 279 U. S. 871 .....	8, 22
Shileler v. Roberts, (1945) 69 Cal. App. 2d —, 160 P. 2d 67 .....	7
Slaughter House Cases, 16 Wall. 36 .....	6

# Index Continued.

iii

	Page
Smith v. Allwright, 321 U. S. 649 .....	12
Smith v. San Francisco & N. P. R. Co., 115 Cal. 584, 47 P. 582 .....	19
Steele v. Louisville & Nashville R. R. Co., 323 U. S. 192 .....	12
Steward v. Cronan, (1940) 105 Colo. 393, 98 P. 2d 999 ..	7
Stone v. Jones, (1944) 66 Cal. App. 264, 152 P. 2d 19 ..	7
Torrey v. Wolfes, (1925) 56 App. D. C. 4, 6 F. (2d) 702 .....	8, 22, 24
Twin City Pipe Line Co. v. Harding Glass Co., 283 U. S. 353 .....	19, 21
U. S. v. Cruikshank, 92 U. S. 542 .....	6
U. S. v. Dunhington, 146 U. S. 338 .....	11
U. S. v. Harris, 106 U. S. 629 .....	6
Virginia v. Rives, 100 U. S. 313 .....	6
Wall v. Oyster, (1910) 36 App. D. C. 50 .....	19
Wiegman v. Kresel, 270 Ill. 520 .....	25

## CONSTITUTION AND STATUTES.

### Constitution of the United States:

ARTICLE I, SEC. 8 .....	19
AMENDMENT FIVE .....	8, 9, 12, 16
AMENDMENT FOURTEEN .....	8, 9, 16
Alley Dwelling Act of 1934, as amended by Act of June 25, 1938, 52 Stat. 1186, D. C. Code (1940) Sec. 5- 103, et seq. ....	20
Charter of the United Nations and Statutes of Inter- national Court of Justice, U. S. Treaty Series 993, Art. 2, Chap. 1, Par. 7 .....	23
D. C. Code (1940), Sec. 11-301 .....	11
D. C. Code (1940), Sec. 45-501 .....	12
Lanham Act, Public 849, 76th Congress .....	20
U. S. Code, Title 8, Sections 41, 42, 43 (Revised Stat- utes, Sec. 1977, 1978, 1979) .....	17, 18, 23
U. S. Code, Title 28, Section 347 .....	21
United States Housing Act of 1937, 50 Stat. 899, U. S. Code Title 42, Sec. 1401, et seq. ....	20

## AUTHORITIES CITED.

National Capital Housing Authority Report, year end- ing June 30, 1945 .....	20
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# Supreme Court of the United States

OCTOBER TERM, 1947

NO. 290

JAMES M. HURD AND MARY J. HURD,  
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vs.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PAS-  
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## CONSOLIDATED BRIEF FOR RESPONDENTS.

### STATEMENT OF THE CASE.

Respondents deem a brief, succinct statement of the per-  
tinent evidence essential.

In or about the year 1906 the twenty lots immediately  
west of the alley west of First Street in Square 3125 in the  
District of Columbia were improved by dwellings known

as 114 to 152 Bryant Street, N. W., all of them being sold subject to the following deed covenant:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars which shall be a lien against said property."

The eleven lots adjoining said twenty lots westerly to Second Street, N. W., built about the same time, were improved by dwellings known as 154 to 174 Bryant Street, N. W., none of said eleven properties being subject to any restriction as to Negro ownership or occupancy. All of said houses front on the south side of said Bryant Street. On the north side is the U. S. Government Reservoir and filtration plant, McMillan Park, and the District of Columbia Pumping Station, running to within about 100 feet of Fourth Street, N. W. On the south side of Bryant Street, west of Second Street for approximately 150 feet are located a District storage yard and two District garages (R. 381). All lots in the 2300 block of First Street, N. W. in Square 3125, adjoining the 20 covenanted lots on Bryant Street, are subject to the same covenant. With the exception of four houses in the 2100 block of First Street, N. W. (now occupied by Negroes) all houses on First Street, from T Street to the Soldiers Home and all houses to the east of First Street to and including Lincoln Road, from T Street north to the Soldiers Home are occupied by persons of the white race (R. 380-381), and consisting of approximately 1000 homes, six churches, places of business and schools, all under either deed covenants or restrictive agreements on the Negro question and about 80% owner-occupied.

Respondents Hodge purchased their home in 1909, were original occupants, knowing of the Negro covenant; respondents Marchegiani purchased in 1930, relying on the Negro covenant (R. 108); the uncovenanted houses being then occupied by Negroes (R. 125); respondents Giancola purchased in September, 1936, relying on the Negro cove-

nant (R. 81); De Rita purchased in 1940, relying on the Negro covenant (R. 129).

All of the alleged Negro petitioners admitted their color except the Hurds; Mrs. Hurd stated she did not know her color, but attended Negro schools and church, as did her son (R. 170). Mr. Hurd, claiming at the trial his mother and father "are considered as Mohawk Indians" (R. 238), did not deny admitting to respondent Mrs. Hodge that both he and Mrs. Hurd were Negroes (R. 20); stated to attorney for respondents in a letter that they were Negroes (R. 78); his application for renewal of his automobile driver's license showed that he was a Negro (R. 317); the Court observed them both and found them to be Negroes (R. 380). They had actual as well as constructive notice of the deed covenants (R. 381). All of the other Negro petitioners had actual and constructive notice of the deed covenants, and moved into the several properties *after service of the complaint upon them* (R. 382).

Petitioner Raphael G. Urciolo, who was the actual owner of six of the covenanted properties, is a white real estate speculator, who, regardless of court decisions, will sell Negro-restricted houses to Negroes, because he does not believe in such covenants (R. 147). On June 17, 1944, he was put on notice by letter that 5 of the houses owned by him in this subdivision were under deed covenant as to Negroes (R. 146); thereafter, on March 5, 1945, he filed Civil Action No. 27,958 against all other owners of the 20 covenanted houses to quiet title and remove the Negro covenant (R. 151-2); then he sold 3 of his houses to Negroes and instructed his attorney, Charles H. Houston, Esquire, to dismiss the Civil Action (R. 152-3); he made approximately \$10,500 on the sales of the three houses to Negroes (R. 153). He also sold and conveyed premises 126 and 144 Bryant Street, N. W., to Negroes, *after* the issuance and in violation of the judgment for injunction, which includes these properties in its provisions, and in violation thereof (R. 451, 452). The further Statement of the Case in peti-

tioner's brief (pages 4, 5) covering Findings of Facts, and Judgment of the District Court and the affirmation of the U. S. Court of Appeals, with dissent by Justice Edgerton, is substantially correct.

### **SUMMARY OF THE ARGUMENT.**

1. The injunctive relief granted by the District Court is not contrary to the Federal Constitution or implementing legislation.

(a) The First and Fourteenth Amendments do not invalidate the restriction.

(b) The Fifth and Fourteenth Amendments do not prohibit judicial enforcement of the restriction.

(c) The Civil Rights Acts (Sections 1977, 1978 and 1979, Revised Statutes) cannot prohibit judicial enforcement of the restriction.

2. Restrictive covenants are not contrary to the public policy of the District of Columbia.

3. Restrictive covenants are not an undue restraint on the power of alienation or repugnant to other rules of property.

**1. The Injunctive Relief Granted by the District Court is Not Contrary to the Federal Constitution or Implementing Legislation.**

**(a) The Fifth and Fourteenth Amendments do no invalidate the restriction.**

The method of presentation adopted by petitioners would, at first, appear to raise numerous propositions in support of their contentions. An analysis of these points discloses, however, their underlying thesis is discrimination—by the respondents, by all white people, and by the Courts. This is not the true issue, nor has it ever been the true issue in this type of case.

Petitioners punctuate every point with the cry of prejudice — discrimination — denial of “fundamental rights”; they assume that only by casting aside established principles of law can their conception of *right* be attained; they ignore rights of others—not the least the fundamental right to contract and obtain enforcement of those contracts. How else can one enforce, by peaceful means, a valid contract save by seeking his legal rights in a court of competent jurisdiction?

The case of *Buchanan v. Warley*, 245 U. S. 60, permeates petitioners’ brief, and appears to be the principal authority relied on in every point urged by them. That case involved the constitutionality of a municipal ordinance of Louisville, Kentucky, requiring segregation of the races in residential districts and forbidding transfers of property. The sole issue was whether such an ordinance was valid as a legitimate exercise of the police power of the state. This Court cast its decision squarely on that point:

“We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case the ordinance cannot stand” (245 U. S. 60, 82).

The cases of *Harmon v. Tyler*, 273 U. S. 668, and *City of Richmond v. Deans*, 281 U. S. 704, while differing in form, sought the same legislative result as in the Kentucky case. The *Harmon* case was a *per curiam* decision invalidating the legislative act on the authority of *Buchanan v. Warley*, as was the case of *City of Richmond v. Deans*, 281 U. S. 704. All of these cases involved legislative attempts to limit the use and ownership of real property. In each of these cases this Court did no more than hold that legislative action of a State, based solely on color, was repugnant to the Fourteenth Amendment of the Federal Constitution forbidding

any State to deprive any person of life, liberty or property without due process of law. In fact, every case on this point relied on by petitioners where this Court specifically held that the Constitutional guaranties under the Fourteenth Amendment were violated, involves State legislation.

In 1944, this Court in sustaining the Constitutional validity of the so-called New York Civil Rights Act, which provided that labor unions cannot refuse membership because of race, creed or color, emphasized that the prohibitions of the Fourteenth Amendment are addressed to legislative action:

"A judicial determination that such legislation violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment *which was adopted to prevent State legislation designed to perpetuate discrimination on the basis of race or color.*" (Italics supplied) *Railroad Mail Association v. Corsi*, 326 U. S. 88. See also, *Heiner v. Dohman*, 285 U. S. 312, 326.

And this Court has repeatedly distinguished clearly between State, county and municipal laws and ordinances, and the private actions or contracts of individuals.

*Slaughter House Cases*, 16 Wall. 36

*U. S. v. Cruikshank*, 92 U. S. 542

*In Re Virginia*, 100 U. S. 313

*Virginia v. Rives*, 100 U. S. 313

*U. S. v. Harris*, 106 U. S. 629

*Plessy v. Ferguson*, 163 U. S. 537.

The rights of respondents and all owners of property are derived from their contract, the subject-matter of which belongs exclusively to the contracting parties. This is individual action and must not be confused with the power of government to legislate. The limitation on governmental legislative action under the Fifth and Fourteenth Amendments is no more certain than the freedom of individuals to contract in relation to their property.

This fundamental right of contract has been given universal recognition.<sup>1</sup> And it has been applied consistently sustaining the validity of property restrictions created by private contract among property owners.

*Burkhardt v. Lofton* (1944), 63 Cal. App. 2d 230, 146 P. 2d 720.

*Shileler v. Roberts* (1945), 69 Cal. App. 2d —, 160 P. 2d 67.

*Stone v. Jones* (1944), 66 Cal. App. 2d 264, 152 P. 2d 19.

*Los Angeles Investment Co. v. Gary*, 181 Cal. 680, 186 P. 596.

*Chandler v. Zeigler* (1930), 88 Colo. 1, 291 P. 822.

*Steward v. Cronan* (1940), 105 Colo. 393, 98 P. 2d 999.

*Dooley v. Savannah Bank and Trust Co.* (1945), — Ga. —, 34 S. E. 2d 522.

*Queensborough Land Co. v. Cazeaux*, 136 La. 724, 67 So. 641.

*Meade v. Dennistone* (1938), 173 Md. 295, 196 A. 330 (Distinguishing private agreements from State legislation and city ordinances).

*Parmalee v. Morris* (1922), 218 Mich. 625, 188 N. W. 330.

*Porter v. Barrett* (1925), 233 Mich. 373, 206 N. W. 532.

*Lion's Head Lake v. Brezezinski* (1945), 23 N. J. Mis. R. 290, 43 A. 2d 729.

*Ridgway v. Cockburn* (1937), 296 N. Y. Sup. 936.

*Hemsley v. Hough* (1945), — Okla. —, 156 P. 2d 182 (Distinguishing restrictions created by private contract and race segregation ordinances).

*Hemsley v. Sage* (1944), 194 Okla. 669, 154 P. 2d 577.

The Courts of the District of Columbia uniformly have held restrictions of the type here being attacked by petitioners not violative of the due process clause of the Constitution.

<sup>1</sup> *Highland v. Russell Car & Plow Co.*, 279 U. S. 253, 261; *Home Building & Loan Ass'n. v. Blaisdell*, 290 U. S. 398; *Allgeyer v. Louisiana*, 165 U. S. 578, 591.

*Torrey v. Wolfes*, 56 App. D. C. 4, 6 Fed. (2d) 702  
*Russell v. Wallace*, 58 App. D. C. 357, 30 Fed. (2d) 981, cert. denied 279 U. S. 871  
*Cornish v. O'Donoghue*, 58 App. D. C. 359, 30 Fed. (2d) 983, cert. denied 279 U. S. 871  
*Grady v. Garland*, 67 App. D. C. 73, 89 Fed. (2d) 817, cert. denied 302 U. S. 694  
*Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. 2d 23.

In *Hundley v. Gorewitz*, *supra*, the United States Court of Appeals for the District of Columbia, in 1942, stated:

"But in view of the consistent adjudications in similar cases, it must now be conceded that the settled law in this jurisdiction is that such covenants as this are valid and enforceable in equity by way of injunction."

That same Court reiterated this proposition in *Mays v. Burgess*, 79 App. D. C. 343, 147 F. 2d 869, and this Court denied application for certiorari, 325 U. S. 868, where as in the present case, that Court refers to its opinion in *Corrigan v. Buckley*, 55 App. D. C. 30, appeal dismissed, 271 U. S. 323. In 1924 the Court of Appeals of the District of Columbia (now the United States Court of Appeals for the District of Columbia) specifically recognized and clearly sanctioned the right of private individuals to contract in respect of their property (55 App. D. C. 30, 31).

In their enthusiasm to read into the Constitution and decisions of this Court and many other Courts delivered in the past that which is not there, petitioners fail, and possibly refuse, to recognize the destructive effect of their proposition. They fail to apply the Constitutional guarantees equally to all citizens. While they urge that they will be denied the guarantees of the Fifth and Fourteenth Amendments to contract, as individuals, in respect of their property—to buy or sell, occupy and use—unless all past decisions are utterly cast out, they would, by such action, deny to respondents the same right to contract in respect of their property.

**(b) The Fifth and Fourteenth Amendments do not prohibit judicial enforcement of the restriction.**

Petitioners urge that the courts cannot enforce restrictions such as here involved because the judiciary, being a branch of government, is prohibited by the Constitution on authority of *Buchanan v. Warley, supra*. The language of that opinion (245 U. S. 60) does not, in any way, justify or give credence to petitioners' proposition. The Court clearly stated the question to be decided:

"The concrete question here is: May the occupancy, and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the states, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?"

and the Court's decision held specifically that the attempt of the State by *municipal ordinance* to prevent alienation and use of property to a person solely because of color was not "a legitimate exercise of the police power of the state". Certainly no one seriously will argue that the functions of a court are the "exercise of the police power of the state". The courts of the land are the only place where citizens may go to be relieved from the improper or oppressive exercise of the police power of the States; if that were not so the Constitutional guarantees would be mere guides to conscience rather than effective to assure protection to all citizens. This Court has said that "the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged *regulation* as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory." (*Nebbia v. New York* (1934), 291 U. S. 502, 536.) It is too fundamental to require more than the mere observation that many acts of the Federal Government and the States, claimed to be discriminatory, do not involve Negroes. Petitioners appear to take the position that only Negroes are discriminated against; they do not concede

that the courts are the only place where law-abiding citizens may obtain equal protection of the laws and save themselves from being deprived of their property without due process of law.

Under our judicial system courts are established to give to all citizens the opportunity to have their private rights, in their dealing one with another, adjudicated by impartial tribunals. While the power of courts is derived from the people through their Constitutions and statutes, State and Federal, and in that sense is representative of governmental authority, it must be clear that never has it been seriously questioned that the judiciary is a separate and unique form of governmental function. If this were not so, private citizens could not fearlessly attack legislative and executive action before the courts. The courts are the guardians of the private rights of all citizens—in their relations with other citizens respecting their personal and property rights and in their relations with government, be it Federal or State. The courts do not hesitate to hold Acts of Congress and administrative activities of the Executive branch to infringe the rights of private citizens; nor do courts hesitate to adjudicate the innocence of persons charged with crime. Yet, it is the Executive branch of government which claims a crime has been committed. If the courts were government, as urged by petitioners, there could be no trial; for when the Executive says a criminal act has been committed its alter ego—the courts—would function only to commit to jail, performing a mere ministerial function dictated by the Executive. This is obviously not our system; indeed it is a practice which we have strenuously criticized and condemned foreign powers for following.

The power of the judiciary as an independent agency, to examine and nullify Acts of Congress, has been recognized since *Marbury v. Madison*, 1 Cr. 137, 2 L. ed. 60. The courts are not concerned with political issues, as emphasized in *Georgia v. Stanton*, 6 Wall. 50, 18 L. ed. 721, where

it was sought to restrain the putting into effect of an Act of Congress providing for military government in Georgia:

"For the rights, for the protection of which our authority is invoked, are the rights of sovereignty, of political jurisdiction, of government, of corporate existence of a State, with all its constitutional powers and privileges. No ease of private rights or private property infringed, or in danger of actual or threatened infringement, is presented by the bill, in a judicial form, for the judgment of the Court."

But where a State or the Federal Government improperly exercises its governmental functions so as to constitute invasion of private rights, the courts will take jurisdiction.

*Cohens v. Virginia*, 6 Wheat. 264  
*Laue v. Watts*, 234 U. S. 525.

In *United States v. Dunnington*, 146 U. S. 338, a suit to recover money claimed to be due as a result of condemnation proceedings in the Supreme Court of the District of Columbia, and claimed to have been paid out of the registry of the court to the wrong party, this Court said:

"Assuming that the payment of the entire amount to the heirs of King was a mistake, it is difficult to see how the United States can be held responsible for it. *The courts of the United States are in no sense agencies of the Federal Government*, nor is the latter liable for their errors or mistakes; they are independent tribunals, created and supported, it is true, by the United States; *but the government stands before them in no other position than that of an ordinary litigant.* (Italics supplied)

Petitioners' thesis is that the District Court, exercising its general jurisdiction in the District of Columbia,<sup>2</sup> by its very entertaining of the suit to enforce the restrictive covenant, regardless of the result, i.e., judgment for injunction, has denied the petitioners their property rights without

<sup>2</sup> Section 11-301, D. C. Code (1940).

due process of law contrary to the Fifth Amendment of the Constitution. They say this is true because the Court is *government* and government is prohibited from taking property without due process of law. The very instances of what are denominated as discrimination cited in petitioners' brief illustrate the separation of state and judicial authority. They refer to cases involving a Negro's right to vote,<sup>3</sup> status in a labor union,<sup>4</sup> use of interstate buses,<sup>5</sup> and city ordinances or State statutes restricting use or ownership of property based on color.<sup>6</sup> In each instance the controversy was submitted to the courts, either by the persons claiming to have been discriminated against, or by the State for criminal prosecution. If it were not for the independent action of the judiciary in each instance, the person's rights as finally adjudicated would not have been defined, much less protected. Where else may private citizens obtain protection of their personal and property rights against infringement but in the courts?

That is precisely the case here. Respondents, as plaintiffs in the District Court, sought the Court's protection in enforcing private property rights which they acquired by virtue of owning and occupying property in an area where each property therein was subject to a restriction against ownership or use by Negroes. These constituted reciprocal easements,<sup>7</sup> an enforceable right as to each property created by private contract or covenant uniformly established and identical in application; the character and extent of the restriction was recorded among the land records of the District of Columbia and constituted notice to all persons required to take cognizance thereof.<sup>8</sup> The record shows

<sup>3</sup> Smith v. Allwright, 321 U. S. 649.

<sup>4</sup> Steele v. Louisville and Nashville R. R. Co., 323 U. S. 192.

<sup>5</sup> Morgan v. Virginia, 328 U. S. 373.

<sup>6</sup> Buchanan v. Warley, 245 U. S. 60; Harmon v. Tyler, 273 U. S. 668; City of Richmond v. Deans, 281 U. S. 704.

<sup>7</sup> Mays v. Burgess, *supra*; Meade v. Dennistone, *supra*.

<sup>8</sup> Section 45—501 D. C. Code (1940).

that Urciolo, a white man, purchased the properties in question with full knowledge of the restriction and immediately re-sold to the Negro defendants who also had full knowledge of the restriction. Certainly it cannot be claimed any of them had pre-existing rights in the properties; yet it cannot be denied that the respondents had pre-existing property rights which would be destroyed by the continued ownership and occupancy of the Negroes. There was nothing to compel the white petitioner, Urciolo, to acquire the properties if he objected to being subjected to the restriction—the courts are not concerned with an individual's idea of what is valuable or beneficial or what he may consider valueless or burdensome—nor were the Negro petitioners required to acquire the properties. But, when they did so acquire the properties, they become subject to the pre-existing property rights of others whose properties were similarly restricted. Hence, there arises a right in the parties to obtain enforcement of their property rights. Can this be denied any citizen of the United States, can it be seriously urged that the District Court was without jurisdiction to adjudicate this private right of property, or that the Court cannot enforce a property right? *If this were so, the respondents certainly would be deprived of their property without due process of law.*

Here, respondents have defined property rights; the petitioners have no property rights. Petitioners denominate these covenants as "racial zoning" and by this clever device say there is no difference between this case and *Buchanan v. Warley, supra*. The city ordinance in that case did not create a private property right any more than a zoning regulation creates private rights; they may be changed at the will of the legislature, town council or zoning commission. They could not give rise to equitable enforcement by a private citizen; their enforcement is by criminal penalty, prosecuted by the State. But it cannot be denied that the Constitution guarantees to all citizens due process of law in the enforcement of their private contract rights.

In answer to the same contention made here by petitioners, the California Court in *Burkhardt v. Lofton* (1944), 63 Cal. App. 2d 230, 146 P. 2d 720, stated:

"The decree of the trial court in the instant case was not, within constitutional principles, action by the State through its judicial department. Plaintiffs' rights are derived from their contract, the subject matter of which belonged exclusively to the contracting parties \* \* \* if the contract is valid it cannot be nullified under any theory that courts are without power to enforce it."

Appropriately, it may be asked: How and in what manner are any of the petitioners deprived of their property without due process of law? What property? What failure of due process?

The white man was not required to buy the property or sell to the excluded class and the Negroes acted with full knowledge of the pre-existing rights of respondents and, hence, acquired no rights. How can petitioners say, then, that they are denied due process? With no property rights to assert, as against the enforceable property rights of respondents, how can they claim deprivation of due process? The voluminous record in these cases stands in testimony of the full trial, with all defendants before the court, appeal to the United States Court of Appeals and the present review by this Court.

"The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard *the right for which the constitutional protection is invoked*. If these are preserved, the demands of due process are fulfilled." (Italics supplied) *Anderson National Bank v. Lockett*, 321 U. S. 233, 246. See also: *Davidson v. New Orleans*, 96 U. S. 97.

Although the contention of petitioners, that the judicial enforcement of such private restrictions is unconstitutional, has been urged and earnestly briefed and argued in every

case of this kind arising in the District of Columbia in the last ten years and in most of such cases arising in the States," no court has accepted the proposition.

These contentions are not new. They were strenuously urged in 1925 in *Corrigan v. Buckley*, 271 U. S. 323, and in the Court of Appeals, *Corrigan v. Buckley*, 55 App. D. C. 30, 299 F. 899, (now the United States Court of Appeals for the District of Columbia) notwithstanding the statements of petitioners that the questions here presented now were not then decided. An examination of the briefs, as well as recollection of the argument, in both Courts indicates clearly that the precise propositions were thoroughly treated. Beginning at page 98 of their brief, as elsewhere, petitioners distort the plain meaning of the language of this Court.

At page 329 of the opinion, this Court set the pattern of the decision:

"The defendants then prayed an appeal to this court on the ground that such review was authorized under the provisions of Sec. 250 of the Judicial Code—as it then stood, before the amendment made by the Jurisdictional Act of 1925—in that the case was one 'involving the construction or application of the Constitution of the United States' and 'in which the construction of certain laws of the United States,' namely Secs. 1977, 1978, 1979 of the Revised Statutes . . . were 'drawn in question' by them. *This appeal was allowed in June, 1924.*

"The mere assertion that the case is one involving the construction or application of the Constitution, and in which the construction of Federal laws is drawn in question, does not, however, authorize this court to entertain the appeal; and it is our duty to decline jurisdiction if the record does not present such a constitutional or statutory question substantial in character and properly raised below. (Citing cases) *And, under well settled rules jurisdiction is wanting if such questions are so unsubstantial as to be plainly without color*

<sup>9</sup> See cases cited on page 7, supra.

*of merit and frivolous.* (Citing cases).” (Italics supplied)

Thus the court clearly stated that if the appellants’ contentions were lacking in merit, the Court lacked jurisdiction. This is exactly the reverse of what petitioners, at page 100 of their brief, say:

“In fact, since this Court had no jurisdiction, it cannot be said to have given final consideration to any question not involved in reaching that conclusion.”

What this Court in the Corrigan case did was to examine the same contentions now here made and found each to be “so unsubstantial as to be plainly without color of merit and frivolous.” That, respondents submit, is exactly what the contentions now made must be considered—unsubstantial and without merit.

This Court specifically held at page 330 of the opinion:

“The Fifth Amendment ‘is a limitation only upon the powers of the general government,’ (citing cases) and is not directed against the action of individuals. . . . And the prohibitions of the Fourteenth Amendment ‘have reference to state action exclusively, and not to any action of private individuals’. *Virginia v. Rives*, 100 U. S. 313, 318; *United States v. Harris*, 106 U. S. 629, 639. ‘It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment.’ *Civil Rights Cases*, 109 U. S. 3, 11. *It is obvious that none of these Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color whatever for the contention that they rendered the indenture void.*” (Italics supplied)

On the contention of the appellants in the Corrigan case that the action of the Court was the action of government and prohibited by the Fifth and Fourteenth Amendments (the precise contention now insisted upon by petitioners), this Court said; by way of recapitulation, at page 331:

"The defendants were given a full hearing in both courts; they were not denied any constitutional or statutory right; and there is no semblance of ground for any contention that the decrees were so plainly arbitrary and contrary to law as to be acts of mere spoliation. (Citing case) Mere error of a court, if any there be, in a judgment entered after a full hearing, does not constitute a denial of due process of law (citing cases)."

It is to be noted that the court below entered a decree of injunction substantially in the language of the judgments in the present cases.

Thus this court, *nine* years after *Buchanan v. Warley, supra*, clearly and decisively distinguished between the constitutional validity and enforceability by the courts of individual property rights, and *state action* relating to control of property because of race or color. The former is sustained; the latter is prohibited.

**(c) The Civil Rights Acts (Sections 1977, 1978 and 1979, Revised Statutes) cannot prohibit judicial enforcement of the restriction.**

As previously urged in *Corrigan v. Buckley, supra*, petitioners urge that the judicial enforcement of the covenant violates Section 1978 of the Revised Statutes of the United States (8 U. S. C. Sec. 42). Here again petitioners distort the clear meaning of the language of this Court in *Corrigan v. Buckley, supra*, at page 331:

"Assuming that this contention drew in question the 'construction' of these statutes, as distinguished from their 'application', it is obvious, upon their face, that while they provide, *inter alia*, that all persons and citizens shall have equal right with white citizens to make contracts and acquire property, they, like the constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property."

Here again is the clear distinction between enforceable private rights and the restraints on governmental power.

With equal clarity the Court of Appeals in *Corrigan v. Buckley*, 55 App. D. C. 30, with reference to the applicability of Sections 1977, 1978 and 1979, Revised Statutes, stated at page 32:

"Defendant claims protection under certain legislation of Congress. As suggested in the opinion of the learned trial justice, this legislation was enacted to carry into effect the provisions of the Constitution. The statutes, therefore, can afford no more protection than the Constitution itself. If, therefore, there is no infringement of defendant's rights under the Constitution, there can be none under the statutes."

## 2. Restrictive Covenants Are Not Contrary to the Public Policy of the District of Columbia.

Petitioners urge that these restrictive covenants "are contrary to the traditional and official public policy of the United States". (Page 111 of petitioners' brief). An examination of their reasons in support of the above-quoted statement suggests immediately their utter misconception of long established principles of judicial appraisal of what constitutes public policy as it applies to the enforcement of private contract rights:

"The general rule is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts. (Citing cases) The meaning of the phrase 'public policy' is vague and variable; courts have not defined it and there is no fixed rule by which to determine what contracts are repugnant to it. The principle that contracts in contravention of public policy are not enforceable should be applied with caution and only in cases plainly within the reasons on which that doctrine rests. . . ."

"In determining whether the contract here in question contravenes the public policy of Arkansas, the Constitution, laws and judicial decisions of that State and

as well the applicable principles of the common law are to be considered.

*Twin City Pipe-Line Co. v. Harding Glass Co.*, 283 U. S. 353, 356.

It is firmly settled that the sources of public policy are the Constitution and statutes, judicial opinions and the general customs of the jurisdiction where the public policy is being examined. No farther statement need be made.

And it is uniformly accepted that a court should only declare contracts void as against public policy when expressly or impliedly forbidden by the paramount law, by some principle of the common law, or by the provisions of a statute. *McCoy v. Pew*, 153 Cal. 735, 96 P. 893; *Smith v. San Francisco & N. P. R. Co.*, 115 Cal. 584, 47 P. 582; *Langdon v. Conlin*, 67 Neb. 243, 93 N. W. 389.

Applying these well defined tests to the present cases it is clear that the indentures are not in any sense contrary to public policy in the District of Columbia.

In Part 1 of this brief respondents have shown that there are no constitutional prohibitions relating to these indentures.

Pursuant to Art. 1, Sec. 8 of the Constitution the Congress has exclusive control over the District of Columbia and pursuant thereto may enact legislation applicable to the District of Columbia in the same manner and to the same extent that the state legislatures function in the several states. The Congress exercises police power over the District of Columbia—it has created a municipal corporation, moneys for its operation being annually appropriated by the Congress through a complicated and comprehensive budget system under the Federal Budget Bureau. Congress has provided separate schools,<sup>10</sup> hospitals and recreational facilities for white and colored and the administration of these services recognizes the separation of the races. (*Plessy v. Ferguson*, 163 U. S. 537.) It cannot be

<sup>10</sup> *Wall v. Oyster*, 36 App. D. C. 50.

argued Congress is not aware of these conditions, for annually many days of Congressional hearings are devoted to the appropriation of funds for negro and white educational, recreational and hospital facilities. If the legislature—and it cannot be ignored that it is the National Legislature—had adopted non-segregation as its policy it would, in these annual examinations of District of Columbia public facilities, abolish these long-standing governmental practices.

The Federal Government acting pursuant to the Alley Dwelling Act of 1934, the Lanham Act,<sup>11</sup> and the United States Housing Act of 1937 erects and operates all forms of public housing in the District of Columbia. Without exception the policy of these agencies and the actual operation of all public housing in the District of Columbia is the maintenance of separate developments for whites and negroes.<sup>12</sup>

Petitioners devote many pages of their brief in an attempt to show that the many and difficult problems of negro citizens stem from enforcement of restrictive indentures, but they fail completely to recognize or deliberately ignore the fundamental rule of judicial construction that courts are not concerned with purely political issues.<sup>13</sup> Alleviating over-crowding, crime, sub-standard health conditions and the like are the "legitimate exercise of the police power" of Congress over the District of Columbia. Neither this Court nor the trial court can correct or remedy the conditions complained of. Petitioners' brief would indicate many and varied individuals, groups, organizations and even government agencies have devoted much time and effort to the problems complained of; yet, the Congress to which the solution of these problems must be addressed, has not acted, either for the District under its police power, or nationally by whatever authority and by whatever con-

<sup>11</sup> Public Law 849, 76th Congress.

<sup>12</sup> See National Capital Housing Authority Annual Report to the President of the United States, for the fiscal year ending June 30, 1945.

<sup>13</sup> Georgia v. Stanton, 6 Wall. 50, 18 L. Ed. 721.

trol it may have. Neither are Presidential statements or other declarations of political officers of the Government the test of what is public policy, but only the practice of these officials in the administration of public laws entrusted to them for execution may be examined. *Twin City Pipe Line Co. v. Harding Glass Co.*, 283 U. S. 353. Certainly the varying opinions of laymen, lawyers, or judges as to the demands of the interest of the public are not to be considered. *Hartford Fire Ins. Co. v. Chicago M. and St. P. R. Co.* (C. C. A. 8th) 70 F. 201, affirmed in 175 U. S. 91; *Burkhardt v. Lofton*, 63 Cal. App. 230, 146 P. 2d 720.

The United States Court of Appeals for the District of Columbia, while not technically the highest court of a state, in the local judicial system has the same powers of the highest court of a state, and its mandates are final, subject only to allowance of the writ of certiorari by this Court.<sup>14</sup> That Court in *Corrigan v. Buckley*, 55 App. D. C. 30, 299 F. 899, expressed clearly the proper test of public policy and recognized a fundamental truth in stating:

"It follows that the segregation of the races, whether by statute or private agreement, where the method adopted does not amount to the denial of fundamental constitutional rights, cannot be held to be against public policy. Nor can the social equality of the races be attained, either by legislation or by the forcible assertion of assumed rights."

And the court pointed out also that even in the absence of statutory pronouncements, "the same general and settled public opinion controls in respect of the segregation of the races in churches, hotels, restaurants, lodging houses, apartment houses, theaters, and places of amusement."

This adjudication of the applicable public policy in the District of Columbia has been re-examined (in the light of what petitioners and previous defendants in similar cases have denominated as changed conditions) and affirmed by

<sup>14</sup> U. S. Code, Title 28, Section 347.

the United States Court of Appeals periodically since its pronouncement in 1924.<sup>15</sup>

Chief Justice Groner very ably pointed the way in *Mays v. Burgess*, 79 App. D. C. 343, 147 F. 2d 869, where, speaking for the court, he stated:

"As stated before, rights created by covenants such as these have been so consistently enforced by us as to become a rule of property and within the accepted public policy of the District of Columbia.

"Little need now be said on the subject of that policy. The proposition is not new and was unsuccessfully urged in the *Corrigan* case, *supra*, in this court and in the Supreme Court. And nothing is suggested now that was not considered then. The Constitution is the same now as then, and we are cited to no new public laws, nor indeed to any other course or practice of Government officials, which the *private* action of the original owners of the block in question contravenes. And the public policy of a State of which courts take notice and to which they give effect must be deduced—in the main—from these sources. Surely it may not properly—be found in our personal views on sociological problems. As to the District of Columbia, we must take judicial notice of the fact that separate schools are established for the white and colored races; separate churches are universal and are approved by both races; and that in the present local housing emergency, large amounts of public and, perhaps also, of private funds have been expended in the establishment of homes for the separate use of white and colored persons. And these accepted practices are not intended to and should not be considered to imply the inferiority of either race to the other."

It is respondents' position that what petitioners denominate as Federal public policy is not applicable to private property rights created by private contract among private individuals. However, petitioners' contentions relating thereto, it is submitted, are not valid, even if applicable.

<sup>15</sup> *Torrey v. Wolfes*, *supra*; *Russell v. Wallace*, *supra*; *Cornish v. O'Donoghue*, *supra*; *Grady v. Garland*, *supra*; *Hundley v. Gorewitz*, *supra*.

They rely on the United Nations Charter as "official public policy of the United States against discrimination based on race or religion." That document, say petitioners, pledged the United States to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race".<sup>16</sup> This is a high objective, but it does no more than pledge this Nation to encourage and assist *other nations*, not fortunate enough to have our form of government. As a treaty it refers only to matters *between* nations involved,<sup>17</sup> and cannot be applied to private rights among the citizens of any member nation. Nor has Congress undertaken any enactments on the subject affecting the private rights of citizens.

An examination of petitioners' brief fails to disclose any statutory enactment by Congress which would have the effect of declaring any National policy on the subject of the separation of the races by private action of private parties, and we know of none. Sections 1977, 1978 and 1979 of the Revised Statutes of the United States are not applicable.<sup>18</sup>

Chief Justice Groner further observed in *Mays v. Burgess*.<sup>19</sup>

"That the broad social problem, of which the question in the instant case is but one aspect, is both serious and acute, no thoughtful person will deny. That its right solution in the general public interest calls for the best in statesmanship and the highest in patriotism is equally true. But it is just as true that up to the present *no law or public policy has been contrived or declared whereby to eradicate social or racial distinctions in the private affairs of individuals*. And it should now be apparent that if ever the two races are to meet upon mutually satisfactory ground, *it cannot*

<sup>16</sup> Petitioners' Brief, p. 115.

<sup>17</sup> Paragraph 7, Chapter 1, Article 2, Charter of the United Nations and Statutes of International Court of Justice, U. S. Treaty Series 993.

<sup>18</sup> *Supra*, p. 18.

<sup>19</sup> 79 App. D. C. 343, 147 F. 2d 869, certiorari denied 325 U. S. 868.

be through legal coercion or through the intimidation of factions, or the violence of partisans, but must be the result of a mutual appreciation of each other's problems, and a voluntary consent of individuals. And it is to this end that the wisest and best of each race should set their course." (Italics supplied)

### 3. Restrictive Covenants Are Not an Undue Restraint on the Power of Alienation or Repugnant to Other Rules of Property.

Petitioners' position on this proposition cannot be sustained. The United States Court of Appeals for the District of Columbia has specifically ruled on this point.<sup>20</sup>

This question was settled in *Cowell v. Colorado Springs Co.*, 100 U. S. 55, 25 L. ed. 547, involving the validity of a covenant to the effect that intoxicating liquors should never be sold on the premises. Mr. Justice Field, delivering the unanimous opinion of the Court, and in answer to the contention that the condition was repugnant to the estate granted, says:

"But the answer is that the owner of property has a right to dispose of it with a limited restriction on its use, however much the restriction may affect the value or the nature of the estate. Repugnant conditions are those which tend to the utter subversion of the estate, such as prohibit entirely the alienation or use of the property. Conditions which prohibit its alienation to particular persons or for a limited period, or its subjection to particular uses, are not subversive of the estate; they do not destroy or limit its alienable or inheritable character."

In *Torrey v. Wolfes*, *supra*, the Court of Appeals, in upholding the validity of a covenant identical with the one now under consideration, held that any citizen, whether he be

<sup>20</sup> *Cornish v. O'Donoghue*, (1929) 59 App. D. C. 359, 30 F. 2d 983, certiorari denied 279 U. S. 871; *Torrey v. Wolfes*, (1925) 56 App. D. C. 4, 6 F. 2d 702; *Hundley v. Gorewitz*, (1942) 77 U. S. App. D. C. 48, 132 F. 2d 132; *Grady v. Garland*, (1937) 67 App. D. C. 73, 89 F. 2d 817, certiorari denied, 302 U. S. 694.

white or colored, has the right to sell his property "under such lawful restrictions as he may see fit to impose."

The true test of whether restrictions or conditions are void as a restraint on alienation is whether the restriction imposed restrains *all* alienation. There is a clear distinction between restrictions against *all* alienation and restrictions against alienation to *particular persons* or for *particular purposes*. Clearly, the covenant restrictions in the present case do not forbid *all* alienation; but, rather, the owner is free to sell his property at any and all times to any and all persons, except those of the excluded race. He is free to transfer a complete fee simple estate subject, however, to an equitable, enforceable right in the nature of an easement.<sup>21</sup>

### CONCLUSION.

The restrictive covenant here involved is a valid and subsisting property right; is not prohibited by the Constitution or invalidated by any Acts of the Congress; is not an undue restraint on alienation or repugnant to the public policy of the District of Columbia and, hence, is entitled to enforcement by appropriate judicial decree on application of parties whose rights are involved.

It is respectfully submitted that the judgment below be affirmed.

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<sup>21</sup> Mays v. Burgess, 79 U. S. App. D. C. 343, 147 F. 2d 869, certiorari denied 325 U. S. 868; Castleman v. Avignone, 56 App. D. C. 253, 12 F. 2d 326; Wiegman v. Kresel, 270 Ill. 520.

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1947

No. 290

JAM. M. HURD and MARY I. HURD,

*Petitioners,*

*v.s.*

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE  
DERITA, VICTORIA DERITA, CONSTANTINO MARCHE-  
GIANI, MARY M. MARCHEGIANI, BALDUINO GIANCOLA  
and MARGARET GIANCOLA,

**BRIEF OF THE JAPANESE AMERICAN CITI-  
ZENS LEAGUE—AMICUS CURIAE.**

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## SUBJECT INDEX.

	PAGE
Interest of the Japanese American Citizens League.....	1
Judicial enforcement of race restrictive covenants is contrary to the public policy of the United States.....	2
Forced segregation.....	4
Citizens and veterans without homes.....	5
Official recognition of restrictive covenants and their effect on the housing of returning evacuees.....	9
Conclusion .....	11

## TABLE OF AUTHORITIES CITED.

CASES	PAGE
Buchanan v. Warley, 245 U. S. 60.....	3
Hirabayashi v. United States, 320 U. S. 81.....	2, 4
Korematsu v. United States, 323 U. S. 214.....	2, 4
<b>MISCELLANEOUS</b>	
Final Report: Japanese Evacuation from the West Coast, 1942, U. S. Government Printing Office, 1943, pp. 9, 17. Myths and Facts About the Japanese Americans, Department of the Interior, War Relocation Authority, U. S. Government Printing Office, June, 1945, p. 27 et seq.....	4
Inter-American Conference on Problems of War and Peace, Pan American Union, Congress and Conference Series No. 47, 1945, p. 70.....	3
Pacific Citizen, June 31, 1946, p. 4.....	8
Pacific Citizen, July 19, 1946, p. 2.....	8
Pacific Citizen, Jan. 11, 1947, p. 8.....	6
Pacific Citizen, Jan. 18, 1947, p. 3.....	7
Pacific Citizen, Feb. 1, 1947, p. 3.....	7
Pacific Citizen, April 12, 1947, p. 4.....	6
Pacific Citizen, Aug. 30, 1947, p. 1.....	7
Pacific Citizen, Sept. 27, 1947, p. 1.....	7
Pacific Citizen, Oct. 11, 1947, p. 2.....	8
Pacific Citizen, Nov. 11, 1947, p. 1.....	7
President's Committee on Civil Rights in its report, "To Se- cure These Rights," pp. 68-70 (U. S. Government Printing Office, 1947).....	9
Report of the Postwar Adjustment of the Evacuated Japanese- Americans, People in Motion (U. S. Govt. Printing Office, 1947), pp. 176-179, 182.....	6, 10, 11

Testimony of Mike Masaoka, National Legislative Director of the Japanese American Citizens' League Anti-Discrimination Committee, Inc., before the President's Committee on Civil Rights, May 1, 1947. Reprinted as Appendix B to "People in Motion" (U. S. Government Printing Office, 1947), at p. 258. The statement above set forth appears at p. 259.....	9
54 Yale Law Journal, p. 489 (Prof. Eugene V. Rostov).....	6

### STATUTES

Resolution No. 41 (Act of Chapultepec), adopted March 7, 1945, at Mexico City.....	3
Revised Statutes, Sec. 1978 (8 U. S. C. 42).....	2
Revised Statutes, Sec. 5508 (18 U. S. C. 51).....	3
United Nations' Charter, Sec. 55C (59 Stats. 1031).....	3
United States Constitution, Fourteenth Amendment.....	3



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GIANI, MARY M. MARCHEGIANI, BALDUINO GIANCOLA  
and MARGARET GIANCOLA,

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**BRIEF OF THE JAPANESE AMERICAN CITI-  
ZENS LEAGUE—AMICUS CURIAE.**

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**Interest of the Japanese American Citizens League.**

The Japanese American Citizens League<sup>1</sup> is an organization of United States citizens. Membership is open to all, regardless of race, color or creed. The program of the JACL is best described by its slogan: "For Better Americans in a Greater America" and by the slogan of the League's Anti-Discrimination Committee: "Equal Rights, Equal Opportunities for All." While the JACL is primarily concerned with assisting persons of Japanese ancestry—whose problems, because of the evacuation pro-

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<sup>1</sup>Hereinafter referred to as "JACL."

gram, are necessarily varied and different from other racial groups—the JACL sees only too well that discrimination or unfair treatment against any minority redounds to the detriment of all minorities and therefore to the nation as a whole.

Accordingly, this brief will attempt to bring to this court's attention, in a small way, certain features of the race restrictive covenants and how they have affected the American Japanese.<sup>2</sup> The purpose, however, is not to "tell a tale of woe" but to illustrate a case in point and to demonstrate that what has happened to persons of Japanese ancestry is but an example of what has happened to other minority groups.

### **Judicial Enforcement of Race Restrictive Covenants Is Contrary to the Public Policy of the United States.**

The provisions of our laws and the treaties to which we have become parties, to say nothing of the Constitutional provision itself, make it crystal clear that enforcement by the courts of land covenants based exclusively on race contravenes those laws and treaties as well as the Constitution.

Section 1978, Revised Statutes, 8 U. S. C. 42, provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is en-

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<sup>2</sup>These facts are of common knowledge, and this court may take judicial notice of them here just as it did in the curfew (*Hirabayashi v. United States*, 320 U. S. 81, '96, '98), and evacuation (*Korematsu v. United States*, 323 U. S. 214, 218), cases. See Brief of the United States in the *Korematsu* case, No. 22, October Term, 1944, pp. 11-16, and footnote 2, page 11, of the Brief. See also Brief of the United States in the *Hirabayashi* case; No. 870, October Term, 1942, p. 21.

joyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Section 5508, Revised Statutes, 18 U. S. C. 51, makes it criminal for "two or more persons" to "conspire, to injure, oppress . . . any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same. . . ."

In Section 55 C of the United Nations' Charter we agreed to "promote . . . universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race," (59 Stats. 1031.)

And by Resolution No. 41 adopted March 7, 1945, at Mexico City when the Act of Chapultepec was signed by this nation, we agreed "to prevent . . . all acts which may provoke discrimination among individuals because of race or religion."<sup>2a</sup>

Finally, this court, in interpreting the 14th Amendment to the United States Constitution, said:

"Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color." (*Bychanan & Warley*, 245 U. S. 60, 78, 79.)

From the above it seems plain that when a court lends its arm to enforcement of covenants prohibiting persons

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<sup>2a</sup>Inter-American Conference on Problems of War and Peace, Pan American Union, Congress and Conference Series No. 47, 1945, p. 70.

from using their own land solely by reason of the accident of birth, they are acting diametrically contrary to all of these principles.

### FORCED SEGREGATION.

One of the main reasons given for The Evacuation of the Japanese from the west coast during the war was that Japanese were "clannish", "unassimilated", that they lived in "Little Tokyos".<sup>3</sup> And this court justified, at least in part, such drastic restrictions against loyal United States citizens as curfew (*Hirabayashi v. United States*, 320 U. S. 81) and evacuation (*Korematsu v. United States*, 323 U. S. 214), because of the existence of these phenomena.

If those charges be true, they can to a great extent be attributed to the presence of the restrictive covenant. For the court to enforce restrictive covenants is to further entrench on the national scene a situation found by the military to be dangerous to our national defense. Were the Japanese not forced, by reason of race restrictive covenants, to live in definite areas, they would presumably have lived normal lives throughout the area and consequently the "clannishness" which General DeWitt found so inimical to national safety would not have existed.

Thus we find that one effect of the enforcement of the race restrictive covenant was to prevent persons of Japanese ancestry from intermingling with the rest of the population. And then, this enforced "ghettoizing" was

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<sup>3</sup>Final Report: Japanese Evacuation from the West Coast, 1942, U. S. Government Printing Office, 1943, pp. 9, 17. Myths and Facts About the Japanese Americans, Department of the Interior, War Relocation Authority, U. S. Govt. Printing Office, June, 1945, p. 27 et seq.

used against them to substantiate the upheaval now known as "The Evacuation."

The Evacuation, while it lasted, did end the Little Tokyos. With the leaving of the Japanese and the increased population because of war activity, the Japanese community on the West Coast disappeared from the scene. Other groups moved into the areas.

With The Evacuation ended and the war over, persons of Japanese ancestry were again permitted to return. Since they had to resettle and their former residences were occupied by other people, it would seem to follow that they would disperse in the community at large, and the Little Tokyo would not reappear. This might have happened had not a potent and powerful force ~~work~~ worked against it. That force was the race restrictive covenant. Though no figures are available as to how many Japanese attempted to buy or live in homes as other normal persons in the community, the experience of these people is full of such efforts and of their frustration. Accordingly, the returned evacuee is again being forced to "Little Tokyoize" himself. He is thus again placed in the position of being criticized for being "clannish" and "unassimilable."

#### CITIZENS AND VETERANS WITHOUT HOMES.

Though having fought for this country in the war for the ideal of ridding the world of the pernicious doctrine of the "Master Race", the returning American veteran of Japanese ancestry finds that theory more prevalent in this country than ever before. But an even greater blow is for him to find an official arm of his government, the very courts themselves, aiding in and making possible the further spread and growth of this cancer.

Pitiful cases are being reported continuously throughout the country. Probably the most authentic source of current material on events concerning Americans of Japanese ancestry is the "Pacific Citizen", official organ of the Japanese American Citizens League. We cite some of the cases:

Jon Matsuo, a veteran, upon his return attempted to obtain accommodations in a "Veterans' Housing Project in Minneapolis. He was unable to do so because of the existence of a restrictive covenant. (Pacific Citizen, January 11, 1947, page 8.)

A Japanese family, whose son had been killed in action in France, attempted to purchase a home with the money from the son's insurance. After finding a suitable location, they discovered they could not live on the property because of the existence of a restrictive covenant. (Pacific Citizen, April 12, 1947, page 4.)

Kakuo Terao lost his left arm and the use of his legs in combat in Europe. He is under treatment at the United States Army's Birmingham General Hospital in Van Nuys, California. He is able to see his wife and two-year-old daughter only on week ends. Because the housing project at San Pedro, where his wife and child were living, was sold to private parties, he was forced to find a

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\*The Pacific Citizen is published at 415 Beason Building, Salt Lake City 1, Utah. The United States Department of the Interior in its report on the Postwar Adjustment of the Evacuated Japanese Americans ("People in Motion," U. S. Gov't Printing Office, 1947), relies heavily on it for its sources of information. Of this newspaper, Professor Eugene V. Rostov of the Yale University Law School said: "(It) is an indispensable source of material on events and attitudes with respect to the process of evacuation, internment and relocation." (54 Yale Law Journal 489.)

new home for them. He attempted to purchase a new home in San Fernando Valley near the hospital, only to learn that his family cannot live there because of the existence of restrictive covenants. (Pacific Citizen, August 30, 1947, page 1.)

In Denver, in the fall of 1946, a returning American veteran of Japanese ancestry purchased a new home in a suburb of the city. He has been threatened with ousting therefrom because of the presence of a restrictive covenant. (Pacific Citizen, February 1, 1947, page 3.)

Just this month Robert Sato, a returning veteran, sought a home for himself and his mother in Denver. The presence of a restrictive covenant nullified that aim. (Pacific Citizen, November 11, 1947, page 1.)

Mr. and Mrs. William Utsumi returned after The Evacuation to their home in Oakland, California. Though they moved into their own property, an effort was made to force them to move therefrom because of the existence of a restrictive covenant. (Pacific Citizen, January 18, 1947, page 3.)

Tsunao Shikiguni returned from The Evacuation to his home in southwest Los Angeles. He was notified by an attorney representing property owners in the neighborhood that if he did not move out of the house, suit to force him so to do would be brought against him. (Pacific Citizen, September 27, 1947, page 1.)

Nine hundred returning evacuees who had been living in an emergency trailer camp operated by the Federal Public Housing Agency in Burbank, California, were between the proverbial "frying pan" and "the fire" when the Agency's lease on the property expired. Forced to move from the project, they found themselves unable to

-8-

obtain accommodations, not only because of the general housing shortage in the Los Angeles area, but also because of the presence of restrictive covenants wherever they turned. (Pacific Citizen, June 31, 1946, page 4.)

A concerted effort was made by realtors to set up the whole South San Francisco peninsula as a "white" community from which all minority groups, including the Japanese, would be excluded. (Pacific Citizen, July 19, 1946, page 2.)

Nearly 500 Japanese lived in South Pasadena, California prior to The Evacuation. Upon their return, they found the city almost completely blanketed with restrictive covenants. (Pacific Citizen, October 11, 1947, page 2.)

The above resume does not purport to be exhaustive. The number of Japanese who returned to their former hometowns only to find themselves confronted with restrictive covenants and therefore forced to again "Little Tokyoize" will never be known. The untold suffering and hardship accentuated by the enforcement of the restrictive covenants are matters of public knowledge. Couple this experience with the restrictions placed by the Alien Land Laws and we see a picture of an integral part of our national population driven from desirable areas and pushed into cramped and overcrowded ghettos solely, because of the accident of their birth.

- 9 -

## OFFICIAL RECOGNITION OF RESTRICTIVE COVENANTS AND THEIR EFFECT ON THE HOUSING OF RETURNING EVACUEES.

The use of the word "ghettos" to describe the areas to which Japanese and other minority groups are pushed because of the covenants is not our own. The President's Committee on Civil Rights in its report, "To Secure These Rights", (U. S. Govt. Printing Office, 1947) describes these areas in just that term (pgs. 68-70), and the Committee is of the opinion that judicial enforcement of the covenants is governmental aid to racial discrimination. (Pgs. 69, 70.)

Testimony before the President's Committee by a leading American of Japanese ancestry was to the following effect:

"We persons of Japanese ancestry know the meaning of a housing shortage. We were evicted from our homes and now that we are permitted to return, we find that our former accommodations are occupied by members of other minority groups. We cannot purchase or rent housing in other areas because of restrictive covenants that apply not only to us but to several others. Thus, we are forced to either evict the present occupants or to crowd in in what few facilities there are. In either case, we are not improving community relations but creating race tensions that may, unless something is done to relieve the situation, break out into ugly sores."

<sup>5</sup>Testimony of Mike Masaoka, National Legislative Director of the Japanese American Citizen's League Anti-Discrimination Committee, Inc., before the President's Committee on Civil Rights, May 1, 1947, Reprinted as Appendix B to "People in Motion" (U. S. Govt. Printing Office, 1947) at pg. 258. The statement above set forth appears at pg. 259.

The President's Committee found that in addition to the Japanese, race restrictive covenants have been enforced at least against the following minorities: Armenians, Jews, Negroes, Mexicans, Syrians, Chinese and Indians. ("To Secure These Rights", pg. 68.)

In "People in Motion," Report on the Postwar Adjustment of the Evacuated Japanese Americans (U. S. Govt. Printing Office, 1947), the United States Department of the Interior points out the very serious nature of the housing problem to the returning Japanese. In every case, the existence of the restrictive covenant added to the already mountainous task presented by the general housing shortage.

Thus even in Seattle, where the situation is not so acute as in other places, the covenant effectively has kept the Japanese segregated and out of certain areas. ("People in Motion," pgs. 176-177.)

And in the San Francisco Bay area, where the housing situation for the Japanese has been characterized as "desperate", there have been no new areas since 1942 wherein they can go. This means that despite the great increase in population, the Japanese, and other minority groups who are kept out of the "acceptable" areas, must continue to congregate despite their increased numbers in the same cramped space they had before The Evacuation. ("People in Motion", pgs. 178-179.)

The housing situation in Los Angeles presented the greatest problem for returning Japanese than in any other city. Add to the general housing shortage (125,000 home-

less families) the additional hardship caused by the restrictive covenant and a picture of the situation may be perceived. Again the Japanese are forced back to "Little Tokyo". Of such an area the report says:

"The hostels in Little Tokyo are breeding places of delinquency. They have no room for entertainment, for visiting, or for inviting friends, and so the young people, kids of 14 and 15, run around outside all hours of the night and day." ("People in Motion", pg. 182.)

In Denver the same deterrent to "assimilation" because of the covenant is present. ("People in Motion", pg. 171.)

### Conclusion.

Thus the cycle has run its course. Originally punished because he was "clannish", "unassimilated", and lived in concentrated areas—a situation to a large extent brought about by reason of the restrictive covenant—the Japanese found himself subject to the forced migration of The Evacuation. Returning therefrom and attempting to become assimilated, he found himself effectively kept out of area after area and tract after tract and forced back again into the "Little Tokyos". By reason of this he is once more criticized as being "unassimillable". To all this, the court enforcement of racial restrictive covenants has given aid and comfort. A clearer case of action that is contrary to our avowed public policy could hardly be found.

We have passed laws condemning racial discrimination; we have signed treaties to the same effect; this court has struck down laws which accomplished such discrimination; this court should now, in the same view, prevent the courts of our land from violating that policy.

Respectfully submitted,

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1947.

290

JAMES M. HURD and MARY I. HURD, *Petitioners*,

v.

FREDERIC E. HODGE, ET AL., *Respondents*.

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RAPHAEL G. URCIOLO, ET AL., *Petitioners*,

v.

FREDERIC E. HODGE, ET AL., *Respondents*.

**BRIEF OF THE FEDERATION OF CITIZENS ASSO-  
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WASHINGTON, D. C., THE WHEEL OF PROGRESS,  
WASHINGTON, D. C., AND COLUMBIA IMPROVE-  
MENT ASSOCIATION, INC. WASHINGTON, D. C.,  
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## INDEX.

Preliminary Statement .....	Page 1
The Facts .....	2
The Issue .....	3
The Argument .....	3

## TABLE OF CASES.

Buchanan v. Worley, 245 U. S. 60 .....	5, 8, 9
Burkhardt v. Lofton, 63 Cal. App. 2d 230, 146 P. 2d 720 .....	10
City of Richmond v. Demas, 281 U. S. 704 .....	5
Cornish v. O'Donoghue, 58 App. D. C. 359, 30 F. (2d) 983 .....	3
Corrigan v. Buckley, 55 App. D. C. 30, 271 U. S. 323 .....	3, 4, 8
Cowell v. Colorado Springs, 100 U. S. 55, 25 L. Ed. 547 .....	10
Grady v. Garland, 67 App. D. C. 73, 89 F. (2d) 817 .....	3
Harmon v. Tyler, 273 U. S. 668 .....	5
Hemsly v. Hough, — Okla. —, 156 P. 2d 182 .....	6
Hundley v. Gorewitz, 77 U. S. App. D. C. 48, 132 F. (2d) 23 .....	3, 11
Mays v. Burgess, 79 U. S. App. D. C. 343, 147 F. (2d) 869 .....	3, 7
Mende v. Dennistone, 173 Md. 295, 196 A. 330 .....	6
Plessy v. Ferguson, 163 U. S. 537 .....	6
Railroad Mail Association v. Corsi, 326 U. S. 88 .....	6
Russell v. Wallace, 58 App. D. C. 357, 30 F. (2d) 981 .....	3
Torrey v. Wolves, 56 App. D. C. 4, 6 F. (2d) 702 .....	3

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**PRELIMINARY STATEMENT.**

This brief is filed, with consent of counsel for Petitioners and Respondents, on behalf, and by authority, of the Federation of Citizens Associations of the District of Columbia, Inc., Citizens Forum of Columbia Heights, Washington, D. C., The Wheel of Progress, Washington, D. C., and Columbia Improvement Association, Inc., Washington, D. C.,

all organized and active citizens associations, and interested in the general improvement and civic betterment of the District of Columbia. The Federation of Citizens Associations is a federation of sixty-nine (69) white citizens associations. These member associations cover the entire area of the District of Columbia and their membership represents a large cross-section of its people. The interest of these organizations in the question at issue arises from their firm conviction that it is in the public interest, and in the mutual interest of the two dominant races, that the rule of law, established by numerous decisions of the highest court of the District of Columbia over a quarter of a century, validating and enforcing restrictive covenants, be confirmed by this court.

### **THE FACTS.**

The facts, as to which there is no substantial dispute, are stated in detail in the opinion of the Court below, and in the briefs of Petitioners and Respondents. It is not deemed necessary to reiterate them here. Briefly, in 1906 twenty (20) lots improved by residences on Bryant Street, Northwest, in the District of Columbia, were sold and conveyed under duly recorded deeds, said deeds containing the following restrictive covenant:

"Subject also to the covenants that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two thousand dollars (\$2000), which shall be a lien against said property."

Subsequently, in 1944 and 1945, four (4) of these residence properties were sold and conveyed to negroes in violation of said covenant. The District Court, on final judgment, declared the four deeds to the negro purchasers null and void, ordered them to vacate, and granted the injunctive relief sought by the Respondents. This action was affirmed by the United States Court of Appeals of the District of Columbia.

## THE ISSUE.

The primary issue is whether said restrictive covenant is a valid contract, free from constitutional or other lawful inhibitions, and enforceable by injunction in a court of equity.

## THE ARGUMENT.

### I. Restrictive deed covenants have been consistently upheld in the District of Columbia.

Over the period of a quarter of a century the highest court in the District of Columbia has consistently upheld the validity of restrictive covenants as expressed in deeds, or by agreements between owners of land. There has been no conflict in these decisions, as is evidenced by the following cases:

Torrey v. Wolves, 56 App. D. C. 4, 6 F. (2d) 702; Cornish v. O'Donoghue, 58 App. D. C. 359, 30 F. (2d) 983, cert. denied, 279 U. S. 871; Grady v. Garland, 67 App. D. C. 73, 89 F. (2d) 817, cert. denied, 302 U. S. 694; Hundley v. Gorewitz, 77 U. S. App. D. C. 48, 132 F. (2d) 23; Corrigan v. Buckley, 55 App. D. C. 30, 299 Fed. 899, appeal dismissed 271 U. S. 323; Russell v. Wallace, 58 App. D. C. 357, 30 F. (2d) 981, cert. denied, 279 U. S. 871; May's v. Burgess, 79 U. S. App. D. C. 343, 147 F. (2d) 869, cert. denied, 325 U. S. 868, rehearing denied 325 U. S. 896.

All of the substantial contentions advanced by the Petitioners in the case at bar were presented to the court in the above cases, considered, and rejected. If there is one rule of law that is firmly established by the adjudicated cases in the District of Columbia it is that restrictive covenants, such as the one in the case at bar, are valid and enforceable contracts, not inhibited by a statute, the constitution, or public policy, nor do they constitute an illegal restraint on alienation. It is to be noted that in connection with four of these cases certiorari was denied.

4

**II. In the case of Corrigan v. Buckley the Supreme Court has already adjudicated and rejected four of the major contentions of the Petitioners.**

One of the above cases, arising in the District of Columbia, reached the Supreme Court, *Corrigan v. Buckley*, 271 U. S. 323. Unless we wholly misinterpret the pronouncements of the Court, in its determination of the question of jurisdiction, the Court held, in effect, in that case:

- (1) That a contention that a covenant between private individuals forbidding the sale of real estate to persons of the Negro race violates the 5th and 14th Amendments to the Federal Constitution is entirely lacking in substance and color of merit.
- (2) That a contract between private individuals that certain property shall not be sold to persons of the Negro race is not prohibited by the 5th or 14th Amendments; that the 5th Amendment "is a limitation only upon the powers of the general government \* \* \*—and is not directed against the action of individuals"; that "the prohibitions of the 14th Amendment have reference to state action exclusively, and not to any action of private individuals. . . . It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the Amendment." The Court, continuing, said: "It is obvious that none of these amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color whatever for the contention that they rendered the indenture void."
- (3) That the Civil Rights Statutes, paragraphs 1977, 1978 and 1979 of the Revised Statutes, "do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property. There is no color for the contention that they rendered the indenture void."

- 5
- (4) That a decree enforcing a contract between private individuals forbidding the sale of property to persons of the Negro race does not unconstitutionally deprive persons of property without due process of law, where the persons were afforded a full hearing, and the decree was not so plainly arbitrary and contrary to law as to be an act of mere spoliation.

The Court, failing to find any substantial constitutional or statutory question conferring jurisdiction, declined to determine the following contentions:

- (a) That the indenture was void because contrary to public policy.
- (b) That the indenture was of such discriminatory character that a Court of Equity should not lend its aid by enforcing specific performance of it.

If we have correctly interpreted the Corrigan case, it seems clear that this Court has already finally adjudicated the major contentions of Petitioners, except the two issues set out under (a) and (b) above. The contention of Petitioners that this case is not decisive of any of the issues in this case, and, therefore, mere dictum, is utterly untenable. Consequently, we will devote a major portion of the remainder of this brief to the two issues not determined by the Corrigan case.

However, before taking up the two issues, still undetermined by this Court in the Corrigan case, we call attention to three cases relied on with great emphasis in the brief of Petitioners, as well as in the Amicus Curiae briefs, to sustain their contentions, namely:

Buchanan v. Worley, 245 U. S. 60;

Harmon v. Tyler, 273 U. S. 668;

City of Richmond v. Demas, 281 U. S. 704.

It is submitted with assurance that these three cases have no decisive, or even persuasive, application to the issues in the case at bar. All of these cases involve legis-

lative attempts to limit the use and ownerships of real property, and relate exclusively to state action. In each case the Court did no more than hold that legislative action of a state, based solely on color, was inhibited by the 14th Amendment of the Federal Constitution. In numerous cases, this Court has distinguished with clearness between state legislation, municipal ordinances, and *private contracts of individuals*, and has said, in effect, that the policy manifested in the 14th Amendment was adopted to prevent *state legislation* designed to perpetuate discrimination on the basis of race or color.

*Railroad Mail Association v. Corsi*, 326 U. S. 88;  
*Plessy v. Ferguson*, 163 U. S. 537.

In the case at bar, the rights of Respondents are based on their contract, which rights should be distinguished from the power to legislate. The rights of individuals to contract in relation to their own property are as definitely safeguarded under the Constitution as the right to the protective provisions of the 5th and 14th Amendments against state or federal legislative action. The fundamental right of private contract has been applied consistently in validating restrictive covenants created by private contracts.

*Mead v. Dennistone* (1938), 173 Md. 295, 196 A. 330;  
*Hensly v. Hough-Okla* (1945), 156 P. 2d 182.

These two cases distinguish between restrictions created by private contract and state legislative enactments.

**III. The restrictive covenant in question is not contrary to Public Policy as that Policy finds its expression in the District of Columbia.**

[Public policy, like "general welfare" and "due process of law," is not subject to precise definition. Generally, it appears to be well settled that the sources of public policy are the principles of the common law, the constitution, the

statutes, the judicial opinions, and the general customs of the jurisdiction where the question is being adjudicated. Measured by these yardsticks, it is obvious that the covenant in question is not contrary to the public policy of the District of Columbia, for the following reasons:

- (a) We have demonstrated above that there are no constitutional inhibitions against the covenant;
- (b) Congress, exercising police power in the District of Columbia, has not explicitly inhibited the covenant. Concretely, it has provided separate schools, recreational facilities, and hospitals for white and colored, and the administration of these facilities recognizes the separation of the races. Funds are annually appropriated for these facilities on that basis. Federal housing agencies, under acts of Congress, administer these laws on a basis of separate developments for whites and negroes.
- (c) For a period of twenty-five (25) years the United States Court of Appeals of the District of Columbia has consistently validated restrictive covenants. That judicial policy is well-settled under a long line of decisions.
- (d) In the area of general custom and public opinion, the general policy prevails in the District of Columbia of separating the white and colored races in churches, hotels, restaurants, lodging houses, and places of amusement.

In the case of *Mays v. Burgess*, 79 App. D. C. 343, 147 F. 2d 869, Chief Justice Groner, with accuracy and clearness, applied the law in the District of Columbia, on the question of public policy, to restrictive covenants, in this language:

"As stated before, rights created by covenants such as these have been so consistently enforced by us as to become a rule of property and within the accepted public policy of the District of Columbia.

"Little need now be said on the subject of that policy. The proposition is not new and was unsuccessfully urged in the *Corrigan* case, *supra*, in this court and in the Supreme Court. And nothing is suggested now

8

that was not considered them. The Constitution is the same now as then, and we are cited to no new public laws, nor indeed to any other course or practice of Government officials, which the private action of the original owners of the block in question contravenes. And the public policy of a State of which courts take notice and to which they give effect must be deduced in the main—from these sources. Surely it may not properly—be found in our personal views on sociological problems. As to the District of Columbia, we must take judicial notice of the fact that separate schools are established for the white and colored races; separate churches are universal and are approved by both races; and that in the present local housing emergency, large amounts of public and, perhaps also, of private funds have been expended in the establishment of homes for the separate use of white and colored persons. And these accepted practices are not intended to and should not be considered to imply the inferiority of either race to the other."

It is further submitted that no over-all statement of general objectives—comparable to the general welfare clause of the Federal Constitution—as found in the United Nations Charter can be applied to the private contract rights of citizens of the District of Columbia, in the absence of specific legislation by Congress limiting these fundamental rights.

**IV. The restrictive covenant in question is clearly enforceable in a Court of Equity under the Fifth and Fourteenth Amendments and such enforcement is not "state action" as contemplated by *Buchanan v. Worley*, supra.**

This Court held in *Corrigan v. Buckley*, supra, that the 5th Amendment is a limitation on the powers of the general government, and that the 14th Amendment has reference to *state action exclusively* and not to any action of private individuals, that is, that it is *state action of a particular character* that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment.

The petitioners contend that a court of equity cannot enforce a restrictive covenant contract because the courts are a part of the government and are inhibited under the authority of *Buchanan v. Worley*, supra. In other words, they attempt to identify the judicial action of the court as "state action" prohibited by the 14th Amendment as interpreted in the *Buchanan* case. The *Buchanan* case specifically held that the attempt by a state, by municipal ordinance, to prevent the use or transfer of land to a person solely because of color was not "a legitimate exercise of the police power of the State." It is clear that it is not the province of a court to "exercise the police power of the state." The truth is that the courts are coordinate departments of government, exercising their powers and performing their functions entirely independent of the executive or legislative departments. They are the final sources of authority where citizens may go for relief from the oppressive exercise of the police power of the state. They constitute a separate and unique form of government function. They have power to nullify acts of Congress, or to protect the rights of citizens where the state or federal governments improperly exercise their governmental functions. Certainly, it cannot be fairly said that the adjudication of a court is "state action" in the sense in which that term is used under the authority of the *Buchanan* case. This Court, in *United States v. Dunnington*, 146 U. S. 338, said:

"The courts of the United States are in no sense agencies of the Federal Government, nor is the latter liable for their errors or mistakes; they are independent tribunals, created and supported, it is true, by the United States; but the government stands before them in no other position than that of an ordinary litigant."

It seems clear, therefore, that action of the courts of the District of Columbia, in enforcing contract rights between individuals in the instant case, was not "state action" as defined in the *Buchanan* case under the 14th Amendment.

In the Buchanan case the city ordinance did not create a private property right, nor do zoning ordinances create private right; they may be changed at the will of the town council or legislature. In the case at bar, respondents had defined property rights and the Constitution guarantees to all citizens due process of law in the enforcement of their private contract rights and the equal protection of the laws. The contention of Petitioners was squarely met in *Burkhardt v. Lofton*, 63 Cal. App. 2d 230, 146, P. 2d 720 where the Court said:

"The decree of the trial court in the instant case was not, within constitutional principles, action by the State through its judicial department. Plaintiffs' rights are derived from their contract, the subject matter of which belonged exclusively to the contracting parties \* \* \* if the contract is valid it cannot be nullified under any theory that courts are without power to enforce it."

To sustain the contention of the Petitioners would be to deny to Respondents one of the fundamental privileges of citizenship, access to the courts.

**V. The restrictive covenant in question is not an undue and unlawful restraint on alienation.**

The contention of Petitioners on this proposition is clearly untenable. The case of *Cowell v. Colorado Springs*, 100 U. S. 55, 25 L. ed. 547, appears to be decisive on this issue. There the Court said:

"But the answer is that the owner of property has a right to dispose of it with a limited restriction on its use, however much the restriction may affect the value or the nature of the estate. Repugnant conditions are those which tend to the utter subversion of the estate, such as prohibit entirely the alienation or use of the property. Conditions which prohibit its alienation to particular persons or for a limited period, or its subjection to particular uses, are not subversive of the estate; they do not destroy or limit its alienable or inheritable character."

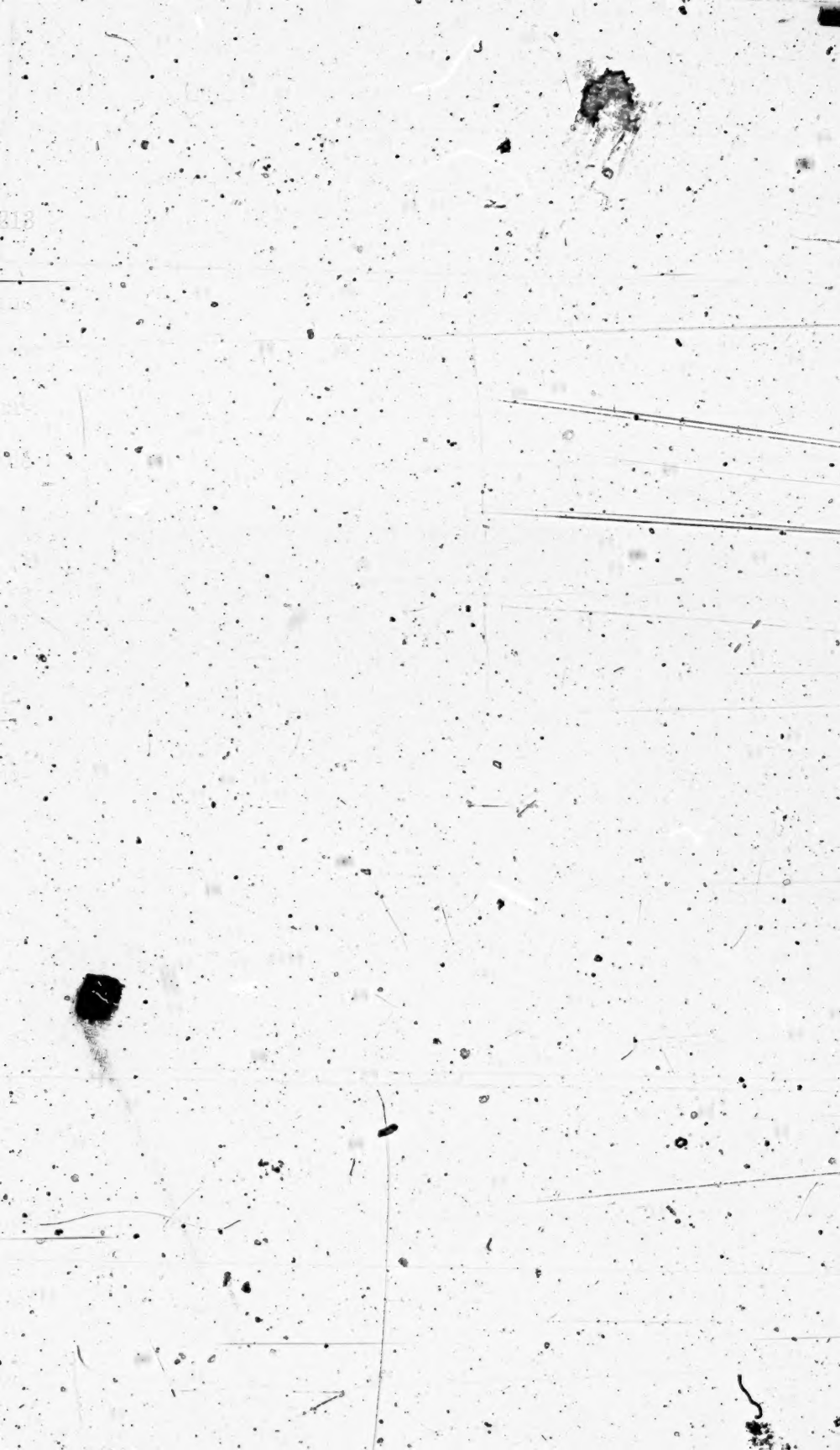
The case at bar falls clearly under the latter portion of said classification. The owner may sell, under the covenant in question, to at least seventy percent of the people in the District of Columbia and, under the rule of *Hundley v. Gorewitz*, *supra*, if conditions in the neighborhood change so that the purposes of the covenant cannot be carried out, it will not be enforced.

In summary, the restrictive covenant here in question is a valid, fundamental property right. It is clearly not inhibited by the Constitution of the United States or invalidated, by Acts of Congress. It is not an undue restraint on alienation or contrary to the public policy of the District of Columbia. Therefore, it is clearly enforceable in a court of equity by injunction, or other appropriate judicial decree, on the petition of parties whose rights are violated.

It is, therefore, respectfully submitted that the judgment of the lower court should be affirmed.

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# SUPREME COURT OF THE UNITED STATES

Nos. 290 AND 291.—OCTOBER TERM, 1947.

James M. Hurd and Mary J. Hurd,  
Petitioners,

290

v.

Frederic E. Hodge, Lena A. Murray  
Hodge, Pasquale DeRita, et al.

Raphael G. Urciolo, Robert H. Rowe,  
Isabelle J. Rowe, et al., Petitioners.

291

v.

Frederic E. Hodge, Lena A. Murray  
Hodge, Pasquale DeRita, et al.

On Writs of Cer-  
tiorari to the  
United States  
Court of Ap-  
peals for the  
District of Co-  
lumbia.

[May 3, 1948.]

MR. CHIEF JUSTICE VINSON delivered the opinion of  
the Court.

These are companion cases to *Shelley v. Kraemer* and  
*McGhee v. Sipes*, ante, p. —, and come to this Court on  
certiorari to the United States Court of Appeals for the  
District of Columbia.

In 1906, twenty of thirty-one lots in the 100 block  
of Bryant Street, Northwest, in the City of Washington,  
were sold subject to the following covenant:

"... that said lot shall never be rented, leased,  
sold, transferred or conveyed unto any Negro or col-  
ored person, under a penalty of Two Thousand Dol-  
lars (\$2,000), which shall be a lien against said  
property."

The covenant imposes no time limitation on the restric-  
tion.

Prior to the sales which gave rise to these cases, the  
twenty lots which are subject to the covenants were at

all times owned and occupied by white persons, except for a brief period when three of the houses were occupied by Negroes who were eventually induced to move without legal action. The remaining eleven lots in the same block, however, are not subject to a restrictive agreement and, as found by the District Court, were occupied by Negroes for the twenty years prior to the institution of this litigation.

These cases involve seven of the twenty lots which are subject to the terms of the restrictive covenants. In No. 200, petitioners Hurd, found by the trial court to be Negroes,<sup>1</sup> purchased one of the restricted properties from the white owners. In No. 291, petitioner Urciolo, a white real estate dealer, sold and conveyed three of the restricted properties to the Negro petitioners Rowe, Savage, and Stewart. Petitioner Urciolo also owns three other lots in the block subject to the covenants. In both cases, the Negro petitioners are presently occupying as homes the respective properties which have been conveyed to them.

Suits were instituted in the District Court by respondents, who own other property in the block subject to the terms of the covenants, praying for injunctive relief to enforce the terms of the restrictive agreement. The cases were consolidated for trial, and after a hearing, the court entered a judgment declaring null and void the deeds of the Negro petitioners; enjoining petitioner Urciolo and one Ryan, the white property owners who had sold the houses to the Negro petitioners, from leasing, selling or conveying the properties to any Negro or colored person; enjoining the Negro petitioners from leasing

<sup>1</sup> All of the residential property in the block is on the south side of the street, the northern side of the street providing a boundary for a public park.

<sup>2</sup> Petitioner James M. Hurd maintained that he is not a Negro but a Mohawk Indian.

or conveying the properties and directing those petitioners "to remove themselves and all of their personal belongings" from the premises within sixty days.

The United States Court of Appeals for the District of Columbia, with one justice dissenting, affirmed the judgment of the District Court.<sup>3</sup> The majority of the court was of the opinion that the action of the District Court was consistent with earlier decisions of the Court of Appeals and that those decisions should be held determinative in these cases.

Petitioners have attacked the judicial enforcement of the restrictive covenants in these cases on a wide variety of grounds. Primary reliance, however, is placed on the contention that such governmental action on the part of the courts of the District of Columbia is forbidden by the due process clause of the Fifth Amendment of the Federal Constitution.<sup>4</sup>

Whether judicial enforcement of racial restrictive agreements by the federal courts of the District of Columbia violates the Fifth Amendment has never been adjudicated by this Court. In *Corrigan v. Buckley*, 271 U. S. 323 (1926), an appeal was taken to this Court from a judgment of the United States Court of Appeals for the District of Columbia which had affirmed an order of the lower court granting enforcement to a restrictive covenant. But as was pointed out in our opinion in *Shelley v. Kraemer, supra*, the only constitutional issue which had been raised in the lower courts in the *Corrigan* case, and, consequently, the only constitutional question

<sup>3</sup> — U. S. App. D. C. —, 162 F. 2d 233 (1947).

<sup>4</sup> Other contentions made by petitioners include the following: judicial enforcement of the covenants is contrary to § 1978 of the Revised Statutes derived from the Civil Rights Act of 1866 and to treaty obligations of the United States contained in the United Nations charter; enforcement of the covenants is contrary to the public policy; enforcement of the covenants is inequitable.

before this Court on appeal, related to the validity of the private agreements as such. Nothing in the opinion of this Court in that case, therefore, may properly be regarded as an adjudication of the issue presented by petitioners in this case which concerns, not the validity of the restrictive agreements standing alone, but the validity of court enforcement of the restrictive covenants under the due process clause of the Fifth Amendment.<sup>5</sup> See *Shelley v. Kraemer*, *supra* at —.

This Court has declared invalid municipal ordinances restricting occupancy in designated areas to persons of specified race and color as denying rights of white sellers and Negro purchasers of property, guaranteed by the due process clause of the Fourteenth Amendment. *Buchanan v. Warley*, 245 U. S. 60 (1917); *Harmon v. Tyler*, 273 U. S. 668 (1927); *Richmond v. Deans*, 281 U. S. 704 (1930). Petitioners urge that judicial enforcement of the restrictive covenants by courts of the District

<sup>5</sup> Prior to the present litigation, the United States Court of Appeals for the District of Columbia has considered cases involving enforcement of racial restrictive agreements on at least eight occasions. *Corrigan v. Buckley*, 55 App. D. C. 30, 299 F. 899 (1924); *Torrey v. Wolfes*, 56 App. D. C. 4, 6 F. 2d 702 (1925); *Russell v. Wallace*, 58 App. D. C. 357, 30 F. 2d 981 (1929); *Cornish v. O'Donoghue*, 58 App. D. C. 359, 30 F. 2d 983 (1929); *Grady v. Garland*, 67 App. D. C. 73, 89 F. 2d 817 (1937); *Hundley v. Gorewitz*, 77 U. S. App. D. C. 48, 132 F. 2d 23 (1942); *Mays v. Burgess*, 79 U. S. App. D. C. 343, 147 F. 2d 869 (1945); *Mays v. Burgess*, 80 U. S. App. D. C. 236, 152 F. 2d 123 (1945).

In *Corrigan v. Buckley*, *supra*, the first of the cases decided by the United States Court of Appeals and relied on in most of the subsequent decisions, the opinion of the court contains no consideration of the specific issues presented to this Court in these cases. An appeal from the decision in *Corrigan v. Buckley*, was dismissed by this Court. 271 U. S. 338 (1926). See discussion *supra*. In *Hundley v. Gorewitz*, *supra*, the United States Court of Appeals refused enforcement of a restrictive agreement where changes in the character of the neighborhood would have rendered enforcement inequitable.

of Columbia should likewise be held to deny rights of white sellers and Negro purchasers of property, guaranteed by the due process clause of the Fifth Amendment. Petitioners point out that this Court in *Hirabayashi v. United States*, 320 U. S. 81, 100 (1943), reached its decision in a case in which issues under the Fifth Amendment were presented, on the assumption that "racial discriminations are in most circumstances irrelevant and therefore prohibited. . . ." And see *Korematsu v. United States*, 323 U. S. 214, 216 (1944).

Upon full consideration, however, we have found it unnecessary to resolve the constitutional issue which petitioners advance; for we have concluded that judicial enforcement of restrictive covenants by the courts of the District of Columbia is improper for other reasons herein-after stated.

Section 1978 of the Revised Statutes, derived from § 1 of the Civil Rights Act of 1866,<sup>7</sup> provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is en-

\* It is a well-established principle that this Court will not decide constitutional questions where other grounds are available and dispositive of the issues of the case. Recent expressions of that policy are to be found in *Alma Motor Co. v. Timken-Detroit Axle Co.*, 329 U. S. 129 (1946); *Rescue Army v. Municipal Court*, 331 U. S. 549 (1947).

<sup>7</sup> 14 Stat. 27. Section 1 of the Act provided: "That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment,

enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."<sup>8</sup>

All the petitioners in these cases, as found by the District Court, are citizens of the United States. We have no doubt that, for the purposes of this section, the District of Columbia is included within the phrase "every State and Territory."<sup>9</sup> Nor can there be doubt of the constitutional power of Congress to enact such legislation with reference to the District of Columbia.<sup>10</sup>

We may start with the proposition that the statute does not invalidate private restrictive agreements so long as the purposes of those agreements are achieved by the parties through voluntary adherence to the terms. The action toward which the provisions of the statute under consideration is directed is governmental action. Such was the holding of *Corrigan v. Buckley*, *supra*.

In considering whether judicial enforcement of restrictive covenants is the kind of governmental action which the first section of the Civil Rights Act of 1866 was intended to prohibit, reference must be made to the scope

pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

The Civil Rights Act of 1866 was reenacted in § 18 of the Act of May 31, 1870, 16 Stat. 144, passed subsequent to the adoption of the Fourteenth Amendment. Section 1977 of the Revised Statutes (8 U. S. C. § 41), derived from § 16 of the Act of 1870, which in turn was patterned after § 1 of the Civil Rights Act of 1866, provides: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

<sup>8</sup> 8 U. S. C. § 42.

<sup>9</sup> Cf. *Talbot v. Silver Bow County*, 139 U. S. 438, 444 (1891).

<sup>10</sup> See *Keller v. Potomac Electric Power Co.*, 261 U. S. 428, 442-443 (1923).

and purposes of the Fourteenth Amendment; for that statute and the Amendment were closely related both in inception and in the objectives which Congress sought to achieve.

Both the Civil Rights Act of 1866 and the joint resolution which was later adopted as the Fourteenth Amendment were passed in the first session of the Thirty-Ninth Congress.<sup>11</sup> Frequent references to the Civil Rights Act are to be found in the record of the legislative debates on the adoption of the Amendment.<sup>12</sup> It is clear that in many significant respects the statute and the Amendment were expressions of the same general congressional policy. Indeed, as the legislative debates reveal, one of the primary purposes of many members of Congress in supporting the adoption of the Fourteenth Amendment was to incorporate the guaranties of the Civil Rights Act of 1866 in the organic law of the land.<sup>13</sup> Others supported

<sup>11</sup> The Civil Rights Act of 1866 became law on April 9, 1866. The Joint Resolution submitting the Fourteenth Amendment to the States passed the House of Representatives on June 13, 1866, having previously passed the Senate on June 8. Cong. Globe, 39th Cong., 1st Sess. 3148-3149, 3042.

<sup>12</sup> See, e. g., Cong. Globe, 39th Cong., 1st Sess. 2459, 2461, 2462, 2465, 2467, 2498, 2506, 2511, 2538, 2896, 2961, 3035.

<sup>13</sup> Thus, Mr. Thayer of Pennsylvania, speaking in the House of Representatives, stated: "As I understand it, it is, but incorporating in the Constitution of the United States the principle of the civil rights bill which has lately become a law, . . . in order . . . that that provision so necessary for the equal administration of the law, so just in its operation, so necessary for the protection of the fundamental rights of citizenship, shall be forever incorporated in the Constitution of the United States." Cong. Globe, 39th Cong., 1st Sess. 2465. And note the remarks of Mr. Stevens of Pennsylvania in reporting to the House the joint resolution which was subsequently adopted as the Fourteenth Amendment. *Id.* at 2459. See also *id.* at 2462, 2896, 2961. That such was understood to be a primary purpose of the Amendment is made clear not only from statements of the proponents of the Amendment but of its opponents. *Id.* at 2467, 2538. See Flack, *The Adoption of the Fourteenth Amendment* 94-96.

the adoption of the Amendment in order to eliminate doubt as to the constitutional validity of the Civil Rights Act as applied to the States.<sup>14</sup>

The close relationship between § 1 of the Civil Rights Act and the Fourteenth Amendment was given specific recognition by this Court in *Buchanan v. Warley, supra* at 79. There, the Court observed that, not only through the operation of the Fourteenth Amendment, but also by virtue of the "statutes enacted in furtherance of its purpose," including the provisions here considered, a colored man is granted the right to acquire property free from interference by discriminatory state legislation. \* In *Shelley v. Kraemer, supra*, we have held that the Fourteenth Amendment also forbids such discrimination where imposed by state courts in the enforcement of restrictive covenants. That holding is clearly indicative of the construction to be given to the relevant provisions of the Civil Rights Act in their application to the Courts of the District of Columbia.

Moreover, the explicit language employed by Congress to effectuate its purposes, leaves no doubt that judicial enforcement of the restrictive covenants by the courts of the District of Columbia is prohibited by the Civil Rights Act. That statute, by its terms, requires that all citizens of the United States shall have the same right "as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property."

<sup>14</sup> No doubts were expressed as to the constitutionality of the Civil Rights Act in its application to the District of Columbia. Senator Poland of Vermont stated: "It certainly seems desirable that no doubt should be left existing as to the power of Congress to enforce principles lying at the very foundation of all republican government if they be denied or violated by the States, and I cannot doubt but that every Senator will rejoice in aiding to remove all doubt upon this power of Congress." Cong. Globe, 39th Cong., 1st Sess, 2961. See also *id.* at 2461, 2498, 2506, 2511, 2896, 3035.

That the Negro petitioners have been denied that right by virtue of the action of the federal courts of the District is clear. The Negro petitioners entered into contracts of sale with willing sellers for the purchase of properties upon which they desired to establish homes. Solely because of their race and color they are confronted with orders of court divesting their titles in the properties and ordering that the premises be vacated. White sellers, one of whom is a petitioner here, have been enjoined from selling the properties to any Negro or colored person. Under such circumstances, to suggest that the Negro petitioners have been accorded the same rights as white citizens to purchase, hold, and convey real property is to reject the plain meaning of language. We hold that the action of the District Court directed against the Negro purchasers and the white sellers denies rights intended by Congress to be protected by the Civil Rights Act and that, consequently, the action cannot stand.

But even in the absence of the statute, there are other considerations which would indicate that enforcement of restrictive covenants in these cases is judicial action contrary to the public policy of the United States,<sup>15</sup> and as such should be corrected by this Court in the exercise of its supervisory powers over the courts of the District of Columbia.<sup>16</sup> The power of the federal courts to enforce

<sup>15</sup> See *United States v. Hutcheson*, 312 U. S. 219, 235 (1941); *Johnson v. United States*, 163 F. 30, 32 (1908).

<sup>16</sup> Section 240 (a) of the Judicial Code, 43 Stat. 938, 28 U. S. C. § 347 (a), provides: "In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

the terms of private agreements, is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents.<sup>17</sup> Where the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power.<sup>18</sup>

We are here concerned with action of federal courts of such a nature that if taken by the courts of a State would violate the prohibitory provisions of the Fourteenth Amendment. *Shelley v. Kraemer, supra*. It is not consistent with the public policy of the United States to permit federal courts in the Nation's capital to exercise general equitable powers to compel action denied the state courts where such state action has been held to be violative of the guaranty of the equal protection of the laws.<sup>19</sup> We cannot presume that the public policy of the United States manifests a lesser concern for the protection of such basic rights against discriminatory action of federal courts than against such action taken by the courts of the States.

*Reversed.*

MR. JUSTICE REED, MR. JUSTICE JACKSON, and MR. JUSTICE RUTLEDGE took no part in the consideration or decision of these cases.

<sup>17</sup> *Muschany v. United States*, 324 U. S. 49, 66 (1945). And see *License Tax Cases*, 5 Wall. 462, 469 (1867).

<sup>18</sup> Cf. *Kennett v. Chambers*, 14 How. 38 (1852); *Tool Co. v. Norris*, 2 Wall. 45 (1865); *Sprott v. United States*, 20 Wall. 459 (1874); *Trist v. Child*, 21 Wall. 441 (1875); *Oscanyan v. Arms Co.*, 103 U. S. 261 (1881); *Burt v. Union Central Life Insurance Co.*, 187 U. S. 362 (1902); *Sage v. Hampe*, 235 U. S. 99 (1914). And see *Beasley v. Texas & Pacific R. Co.*, 191 U. S. 492 (1903).

<sup>19</sup> Cf. *Gandolfo v. Hartman*, 49 F. 181, 183 (1892).

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tiorari to the  
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[May 3, 1948.]

MR. JUSTICE FRANKFURTER, concurring.

In these cases, the plaintiffs ask equity to enjoin white property owners who are desirous of selling their houses to Negro buyers simply because the houses were subject to an original agreement not to have them pass into Negro ownership. Equity is rooted in conscience. An injunction is, as it always has been, "an extraordinary remedial process which is granted, not as a matter of right but in the exercise of a sound judicial discretion." *Morrison v. Work*, 266 U. S. 481, 490. In good conscience, it cannot be "the exercise of a sound judicial discretion" by a federal court to grant the relief here asked for when the authorization of such an injunction by the States of the Union violates the Constitution—and violates it, not for any narrow technical reason, but for considerations that touch rights so basic to our society that, after the Civil War, their protection against invasion by the States was safeguarded by the Constitution. This is to me a sufficient and conclusive ground for reaching the Court's result.